Vol. I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 686

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED JANUARY 6, 1936.

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VOL. I

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI, WESTERN DIVISION

In Equity. No. 2328. (And Related Cases Nos. 2329-2378, Inc.)

F. O. MORGAN, Doing Business as F. O. Morgan Sheep Commission Company, et al., Petitioners, Plaintiffs and Appellants,

vs.

THE UNITED STATES OF AMERICA and THE SECRETARY OF AGRICULTURE, Defendants and Appellees

[fols. 1a-1e] Citation, in usual form, showing service on Stanley Reed, filed July 11, 1935, omitted in printing.

[fol. 2] PETITION—Filed July 19, 1933

To the Honorable the Judges of the District Court of the United States for the Western Division of the Western District of Missouri:

Your petitioner Fred O. Morgan, doing business as Fred O. Morgan Sheep Commission Company, brings this petition in equity against the United States of America and the Secretary of Agriculture of the United States (hereinafter called the "Secretary") for the purpose of suspending, enjoining and annulling a certain purported order of said Secretary dated the 14th day of June, 1933, in a proceeding pending before said Secretary entitled Secretary of Agriculture vs. L. B. Andrews, et al., Docket No. 311. For cause of action, petitioner alleges and shows:

I

Petitioner has its principal office and place of business in Kansas City, Missouri, in the Western Division of [fol. 3] the Western District of Missouri, and is a citizen and resident of the State of Missouri, and a market agency registered with the Secretary of Agriculture of the United

States under and pursuant to the provisions of the Packers & Stockyards Act, 1921 (42 Stat. L. 163) engaged in the business of selling or selling and buying livestock for others at the Kansas City Stock Yards located in Kansas City, Missouri, and in Kansas City, Kansas, posted by the Secretary of Agriculture as a public stock yard pursuant to the provisions of said Act.

II

The United States of America and the Secretary of Agriculture are made defendants in this action pursuant to the provisions of said Packers and Stockyards Act, 1921, the Commerce Court Act (36 Stat. L. 539) approved June 18, 1910, and the District Court Jurisdiction Act, being a part of the Urgent Deficiency Appropriations Act (38 Stat. L. 219) approved October 22, 1913, and amendments thereof. The Secretary on the 7th day of April, 1930, issued and caused to be delivered to this petitioner and the other respondents therein named a certain document described as an "Order of Inquiry and Notice of Hearing" entitled "Docket No. 311, Department of Agriculture." This Order and Notice advised this petitioner that an inquiry would be made by the Secretary under the provisions of Title III of the Packers & Stockyards Act, 1921, into the reasonableness and lawfulness of the rates and charges of this petitioner and other respondents therein named (hereinafter referred to as respondents) for stockyard services rendered at the Kansas City Stock Yards, and [fol. 4] that a hearing would be held before an Examiner designated by the Secretary in respect thereto in Kansas City, Missouri. A hearing was subsequently held before one John C. Brooke, purporting to act under and by the authority of the Secretary, and was concluded on February 10, 1931. On the 27th day of March, 1931, oral arguments in respect to the evidence presented at the hearing were had before one R. W. Dunlap, purporting to be the "Acting Secretary of Agriculture," at Washington, D. C., and a brief was subsequently filed on behalf of this petitioner. On May 18, 1932, there was issued by the said R. W. Dunlap, purporting to be the then Secretary of Agriculture, a certain document entitled "Bureau of Animal Industry, Docket No. 311, Proceedings, Findings of Fact, Conclusion and Order." This petitioner, on account

of the abnormally low prices of livestock then obtaining, on the 11th day of May, 1932, filed with the Secretary a Schedule of Rates and Charges for stockyard services rendered by it at the Kansas City Stock Yards, differing in structure and amounts of charges from the Schedule of Rates and Charges in effect at the time the aforesaid Order of Inquiry was made. Petitioner states that said Schedule of Rates and Charges so filed by the petitioner prior to the making of any of the aforesaid orders in said proceeding was not suspended by the Secretary pursuant to the provisions of the Packers and Stockyards Act, 1921, and is now in force and effect. The Schedule is set forth in Paragraph 84 of the Order. On May 26, 1932, this petitioner filed a Petition for Re-hearing and Re-investigation of the matters in said Notice of Inquiry referred to, which was granted by the Secretary on July [fol. 5] 15, 1932. A re-hearing was had at Kansas City, Missouri, commencing on the 6th day of October, 1932, and concluding on the 16th day of November, 1932, before the said John C. Brooke, as Examiner. Thereafter, and on the 24th day of March, 1933, an oral argument upon the evidence presented at said hearing was had before one Rexford G. Tugwell, then purporting to be the Acting Secretary of Agriculture. Subsequently thereto a brief was filed on behalf of this petitioner. Thereafter, and upon the 14th day of June, 1933, there was issued by the Secretary of Agriculture a certain document entitled "Bureau of Animal Industry, Docket No. 311, Proceedings, Findings of Fact, Conclusion and Order,". (hereinafter referred to as the "Order") attached hereto, marked Exhibit "A", and made a part hereof, which said Order is by this action sought to be suspended, enjoined, set aside and annulled. Petitioner states that on the 5th day of July, 1933, there was filed with the Secretary of Agriculture by the petitioner a Petition for Re-investigation and Re-hearing, a copy of which is attached hereto, made a part hereof, and marked Exhibit "B". The Secretary denied said re-hearing on July 6, 1933, and extended the effective date of the Order to July 24, 1933.

III

The Secretary in said Order finds and concludes that the Schedule of Rates and Charges of this petitioner now in

effect contains rates and charges unjust, unreasonable and discriminatory, and said Order prescribes lower and different rates and charges for the specific stockyard serv-
[fol. 6] ices therein described as set out in Paragraph 180 of the Order. Such Schedule of Rates and Charges so set out in said paragraph is required to be filed in tariff form with the Secretary, and no amounts in excess of the rates and charges therein provided are to be collected thereafter by this petitioner for stockyard services rendered by it on and after the 24th day of July, 1933. Petitioner states that failure to comply with the terms and conditions of said Order will subject this petitioner to heavy and severe fines and penalties as provided in said Packers and Stockyards Act, 1921, and in addition thereto, petitioner as a market agency may be subjected to numerous and vexatious suits for recovery of reparation by shippers of livestock to the market agency conducted by this petitioner at said Kansas City Stock Yards.

IV

Petitioner states that the Order is null and void in that this petitioner was denied a full hearing before the Secretary upon the matters and things referred to in the Order of Inquiry as provided for in said Packers and Stockyards Act, 1921, and the enforcement of the Order would take Petitioner's property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States, in that:

(a) The Secretary overruled and denied the request of this petitioner for a separate, individual and independent hearing apart from any other of the respondents named in said Notice of Inquiry to the prejudice of this petitioner.

(b) This petitioner requested at the conclusion of the [fol. 7] hearings held under said Notice of Inquiry before the said John C. Brooke, that said Examiner prepare a tentative report upon the evidence to be presented to the petitioner and the Secretary subject to oral argument as to any exceptions thereto which the petitioner might care to present, so that in this manner a hearing might be had before the Secretary without undue inconvenience to the Secretary, but said request was denied and no tentative report was exhibited to petitioner and no oral argument

upon the issues presented by said Order of Inquiry and the evidence taken by said Examiner was at any time had before the Secretary.

(c) The Secretary, without warrant or authority of law, delegated to the said R. W. Dunlap and Rexford G. Tugwell, purporting to be at the times hereinbefore named Acting Secretaries of Agriculture, authorities and powers vested solely in the Secretary involving the exercise of discretion and the determination of issues in respect to the justice, reasonableness and lawfulness of the rates and charges of this petitioner. At each and all of the times hereinabove referred to, when the said oral arguments were presented after the original hearing in said proceeding and after the re-hearing thereof, the then Secretary of Agriculture was in Washington, D. C., at his office in the Department of Agriculture, and at said time was neither sick, absent, nor from any other cause disabled in the performance of official duties of said Secretary of Agriculture, and a purported appointment of any other person as Acting Secretary of Agriculture was illegal, null and void under the laws of the United States.

[fol. 8] (d) Petitioner states on information and belief, and, therefore, alleges the fact to be, that the Secretary at the time said Order was signed by him had not personally heard or read any of the evidence presented at any hearing in connection with this proceeding and had not heard or considered oral arguments relating thereto submitted on behalf of this petitioner and had read or considered any briefs submitted by petitioner in this proceeding, but that the sole information of said Secretary with respect to said proceeding was derived from consultation with employees in the Department of Agriculture, out of the presence of this petitioner or any representative of this petitioner.

By reason of each and all of the foregoing facts, petitioners avers that said course of action so taken by the Secretary was without warrant and authority of law, and by reason of each and all of the acts and omissions in this paragraph referred to (including the denial of petitioner's request for a separate hearing and the overruling of objections) this petitioner has been denied the "full hearing" before the Secretary to which the petitioner is entitled under

said Packers and Stockyards Act, 1921, and under the Constitution of the United States.

V

The conclusions contained in the Order as expressed in said Schedule of Rates and Charges are arbitrary, erroneous and do not constitute a statement of just, reasonable and non-discriminatory rates and charges as required by said Packers and Stockyards Act, 1921, in that they are predicated upon findings of fact set forth in said Order [fol. 9] made without evidence and contrary to all the evidence presented at the hearings, hereinbefore referred to, in the following particulars:

(a) The statement (Paragraph 113) that the respondents in 1931 "in the face of almost universal lower levels in the United States were attempting to maintain their personal and salaries thereof at levels obtaining in the more prosperous year 1929, and that this necessarily had a depressing effect upon the net moneys available to the owners of the respondent" market agencies, as shown by audits, is contrary to the testimony submitted by accountants for both the Government and the respondents. The amount claimed as an element of total costs representative of compensation to workers was less in the year 1931 than in the year 1929 by $403,208.38, or approximately 22% of the total compensation to workers in the year 1929. The selling and buying salaries for all respondents recognized by the Chief Accountant for the Government were less by $231,703.51 in 1931 than in 1929, or a reduction of approximately 30%. All of the evidence showed that the diminution in net moneys available to owners of the respondent market agencies in 1931, as compared with net moneys available to the owners of market agencies in 1929, was due to a reduction of approximately 13% in gross revenues, and by reason of the further fact that respondents were unable to reduce proportionately operating costs, such as rent, utility services, postage, taxes, and other fixed expenditures. Petitioner states that the gross revenue collected by all respondents as selling and buying charges in the year 1932 was less by 24.54% than in the year 1929, and for the [fol. 10] first five months of the year 1933, was less by 18.96% than the revenue collected in the first five months of the year 1932. The reduction in 1933 was due to the

combined effect of lower charges and the reduced volume of business handled.

(b) The Order (Paragraphs 142 and 143) holds that it is reasonable to expect a salesman of cattle and calves to sell efficiently 29,000 head of cattle a year, a salesman of hogs to sell efficiently 85,000 head of hogs a year, and a salesman of sheep to sell efficiently 250,000 head of sheep a year. The Order states that each of the salesmen is presumed, in addition to the actual transaction of the sales, to perform all of the services incidental but necessary to the selling operation customarily performed by these salesmen. These services include the maintenance of contacts with the owners of livestock prior to shipment, appraisal in the country, supervision enroute to market either while on pasture, in feed lots, or at railroad feeding stations, keeping informed as to the changing market conditions, sorting and grading the livestock at the market, consulting with owners of livestock at the market, or advising them of the result of the sales if away from the market, together with such other duties as are usually performed by competent and efficient salesmen. This finding is in conflict with all of the credible and competent evidence in the record. The evidence shows that no salesman employed by any respondent during any year reached or attained such a standard of performance. The average number of head handled per salesman either in the year 1929 or 1931, or any other year, by this petitioner, or by any other of the [fol. 11] 61 respondents mentioned in the proceeding, is shown by the evidence to have been less than the standard set forth by the Order and upon which the costs formulated by the Order are based and predicated.

The actual application of this formula in the year 1931 would have reduced the number of cattle salesmen actually employed in the sale of cattle and calves from 188 to 78.77 men. These salesmen would have been required to sell 2,284,207 head of cattle and calves, making 437,688 separate sales at the rate of 8.9 sales per man in each active selling hour. Each salesman would have realized in net proceeds to owners of cattle and calves $2,161.32 per hour instead of $905.55 per hour. The formula as to hogs reduces the number of hog salesmen actually engaged in 1931 from 50 men to 12.3 men. These men would be required to

sell 1,045,048 hogs and to make 13.48 sales per hour, each realizing an average value of $121.94. The net proceeds of sales per actual selling hour for each salesman would be increased from $470.34, the amount actually returned to users of the service, to $1,913.23. The number of sheep salesmen would be reduced from 16 to 7.59 men. These salesmen would be required to sell 1,896,608 head of sheep in a year, making 9.05 sales per selling hour and actually disposing 400.47 head per selling hour. The net proceeds of sales per salesman returned per hour would be increased from $1,080.02 to $2,134.51.

The evidence at the hearing showed that livestock salesmen, unlike ordinary salesmen, determine the price for the commodity they sell. The formula set and standards determined are not only contrary to all the evidence before [fol. 12] the Secretary, but the accomplishment of the results demanded would involve the complete destruction of the efficiency of the marketing operation, cause tremendous losses to the sellers of livestock, and establish an obstruction in the current of commerce in respect to livestock at the Kansas City Stock Yards of such nature as in and of itself to constitute a violation of the provisions of the Packers and Stockyards Act, 1921.

(c) The finding of the Secretary that the sum of $4,000.00 a year was a reasonable compensation for a cattle salesman, $3,000.00 a year for a hog salesman, and $3,500.00 a year for a sheep salesman, regardless of whether such salesman be an owner or an employee, and irrespective of his relative ability, experience, energy or the time devoted to his work or services incidental thereto, is not based upon any evidence in the record, and is contrary to all of the testimony in the record, which was to the effect that the service value of such salesmen was unlike as a result of individual differences in experience, ability, personality, energy and other characteristics, and that owner salesmen as a class were men of greater skill, ability, experience and energy than employed salesmen. The finding is contrary to the testimony of all witnesses who gave evidence with respect to the amount of compensation to which owner-workers connected with this petitioner and other respondents were reasonably entitled for the services rendered by each of them. The Order, in finding that these witnesses were not particularly qualified to express opinions upon

this subject, disregards all of the evidence in respect to the qualifications of such witnesses.

[fol. 13] (d) The conclusion contained in said Order, to the effect that costs classified as "Business-getting and Maintaining Expenses" were unnecessary and excessive, was without evidence in support thereof and contrary to all of the evidence in the record. The costs so classified included amounts actually expended during the year 1931 by this petitioner and others of the respondents for traveling expenses incident to the appraisal of livestock before sale and supervising the feeding of livestock enroute to market at feeding stations, for advertising, for the preparation, printing and posting of circulars and market reports sent to stockmen; for automobile maintenance and transportation in connection with the rendition of the stockyard services required of petitioner under the Act, and for dues and assessments paid to the Kansas City Live Stock Exchange, a voluntary association, to which this petitioner belongs, for the support of the varied and essential activities of said Exchange. The Order erroneously treats all expenses classified by the Government accountants as "Business-getting and Maintaining Expenses" as expenditures incident to procuring new business through the entertainment of prospective customers and advertising, whereas more than 80% of the expenses so classified by the accountants were in fact expenses incurred in the actual rendition of the stockyard services this respondent is required to render under the Act. The amount of expenses so classified and recognized by the Secretary and covered into the rates established would be insufficient to pay all traveling expenses actually incurred by this petitioner, would leave nothing for the payment of dues and assessments due to [fol. 14] the Kansas City Live Stock Exchange, for the sending out of market circulars and market information to patrons, for any form of advertising, or for the operation of automobiles, or for the entertainment of shippers. The undisputed testimony shows that during the period mentioned in the Order commission rates at Chicago and St. Louis, competitive markets, collected by market agencies at such markets were substantially higher than charges of this petitioner. Despite higher rates during said period, the percentage of livestock originating in the territory tributary to Kansas City marketed at Chicago and St. Louis in-

creased in relative volume. Other undisputed evidence discloses the intensity of the competitive efforts of packers and others to divert livestock from the Kansas City market. The clear necessity is apparent for greater rather than reduced expenditure of time, effort and money by this petitioner in getting and maintaining business. The effect of the Order, therefore, in eliminating expenditures for business-getting would be to increase rather than decrease unit operating costs of this petitioner.

VI

Petitioner states that the conclusions expressed in said Order and upon which the Schedule of Rates and Charges for stockyard services contained therein is based and predicated, are arbitrary, inaccurate and erroneous for the reason that relevant facts appearing from the undisputed evidence taken at the hearings were ignored in the Findings of Fact set forth in the Order in the following particulars:

[fol. 15] (a) The evidence showed conclusively that the Schedule of Rates and Charges first placed under inquiry and higher in amount by more than 10% than the rates and charges found to be unjust and unreasonable by the Secretary, was established after hearing and investigation by the then Secretary as a just, reasonable and non-discriminatory Schedule of Rates and Charges under conditions much more favorable to petitioner from the standpoint of both gross and operating net income than the conditions existing in 1929 or subsequent thereto or which may be reasonably expected to exist during the period in which the Order may be effective. It was also shown that the rates and charges under inquiry expressed in percentage of net sales proceeds handled were less than 2% thereof and less on a sales percentage basis than the rates and charges in effect at the Kansas City Stock Yards by market agencies during the period of the greatest growth and development of the livestock market at Kansas City. Such rates were also shown to be less than the charges for commission or brokerage service for selling any other agricultural product, although livestock, due to its perishable nature and other characteristics, and variability in quality and price, involves a greater expenditure of time, effort and professional skill on the part of the selling agencies than any other

of such compared agricultural commodities. The evidence showed that the value to the user of the service of increased efficiency in the selling service amounts to many times the total of all marketing costs. During the period of the World War and from 1913 to 1919, these rates were increased by only 10%, whereas increases occurred of approximately [fol. 16] 200% in cost of living, farm wages, general hourly wages, livestock prices, packing costs, and meat retailing costs and transportation costs, and in brokerage and commission charges affecting other commodities, both agricultural and industrial. The Order in its Findings of Fact or Conclusions does not refer to or consider any of the above evidence, and is erroneous and prejudicial to petitioner in that it failed to give cognizance to the value of the services rendered in determining the amount of just and reasonable rates and charges.

(b) The Order, in Paragraph 129 thereof, states that the Packers and Stockyards Act, 1921, does not clothe the Secretary with authority to determine how many agencies would be required to handle business at the Kansas City Stock Yards properly, but fails to give consideration or weight to the undisputed testimony taken from the official records on file in the office of the Secretary of Agriculture disclosing that the Secretary since 1921 has registered as market agencies at the Kansas City Stock Yards, as competitors of this respondent, applicants for registration who have previously been expelled from membership in the Kansas City Live Stock Exchange for confessed misapplication and embezzlement of the proceeds of the sale of livestock, and has compelled, through court proceedings, the said Exchange and this respondent to extend to such registrants and to many other registrants all of the market facilities of said Exchange, including the use of the Clearing House, participation in the blanket fire insurance policy [fol. 17] maintained by the Exchange, the hog dockage and inspection service, and other services operated by the Exchange.

(c) The Order failed also to give weight or consideration to the undisputed evidence showing that under rules and regulations of the Kansas City Live Stock Exchange, this respondent and other respondents adopted all reasonable means of promoting economies of operation and reducing expenditures incident to the getting and maintenance of

business. The extent, amount and nature of these restrictions upon the solicitation of business were shown by the evidence to have been previously recognized by the Secretary through participation in a Market Practice Agreement relating to the transaction of business by market agencies not affiliated with said Exchange, including agencies organized on the co-operative plan.

(d) The Order predicates the conclusions therein reached upon a finding of fact that the demand for livestock at Kansas City, particularly for hogs, is greater than the supply of livestock at the public market. It sets forth the increasingly large number of hogs received by packers direct at their plants through private stockyard operations during the period from 1921 to August, 1932, but fails to mention or give weight to other important and relevant evidence in the record. This evidence shows that such purchases of livestock as were made at private stockyards by such packers were consummated with the aid of and upon the basis of market prices determined on the date of purchase as to hogs at the Kansas City Stock Yards by and through the efforts of this and others of the respondents, and that [fol. 18] the continuance of such private stockyard operation by said packers was dependent upon the existence of a public price-determining livestock market. This enabled these packers to acquire livestock without contributing proportionately to the cost of the maintenance of said public market. It was further shown that these packers pursued unfair competitive methods and practices in connection with acquiring receipts of livestock through said operations; and that the effect of this situation was not only to reduce the gross revenue of this respondent due to the diminution in volume of hogs and other livestock sold and bought, but also to increase the variability from day to day in amount of livestock marketed.

(e) Although the Order contains a finding of fact stating that livestock tends to move from producers to consumers by the most economical route, it fails to mention or refer to the other relevant and undisputed testimony in the record showing that in the early part of the year 1932 the railroads centering at Kansas City established freight rate differentials and market privileges favoring the use of railroad stockyards in the vicinity of Kansas City, Missouri, amounting to many times the total marketing costs

in livestock handled at the Kansas City Stock Yards, and that such freight rate differentials have diverted livestock from the Kansas City Stock Yards, and will in the future tend to limit and reduce the volume of livestock sold or handled by this petitioner unless such differentials are abrogated by action of the Interstate Commerce Commission now being sought through a proceeding brought by the Kansas City Live Stock Exchange.

(f) The Order failed to give weight or consideration to [fol. 19] the undisputed evidence disclosing operating conditions at Kansas City creating higher market agency operating costs than others of the five leading competitive markets referred to in said Order and which were shown to have higher rates and charges in force and effect than those under inquiry or described as reasonable by said Order. The evidence showed a greater variability in the volume of receipts from day to day of livestock at Kansas City, greater diversity in grades of livestock received, delivery of trucked-in livestock to market agencies at unloading chutes instead of at pens assigned to agencies as at other markets, a greater area from which receipts are drawn, a larger proportion of stocker and feeder cattle handled, necessitating double contacts with sellers in the West and Southwestern portions of the country and buyers in the Central and Eastern portions of the United States, all of which increased the expenditure of effort and money necessary in connection with the efficient operation of the business of this petitioner and other respondents as compared with conditions existing upon other markets. The evidence showed that peak receipts by month or week in Kansas City were equal in volume as to cattle and calves to the peak receipts by month or week in Chicago although the average volume at Kansas City was only 50% of the average volume for the year in Chicago. The Order ignored the effect of variability of volume in creating stand-by expense and increasing unit operating costs.

VII

Petitioner states that the Order is based on erroneous [fol. 20] conceptions of established rules of law and, therefore, the rates and charges provided therein are unlawful and void for the following reasons:

(a) The "functional unit costs" allegedly reasonable set forth in said Order in no instance have a counterpart in the actual experience of any one of the sixty-one respondents named in said proceeding. These theoretical unit costs fixed by the Order when applied to the 1931 volume of all respondents, including this petitioner, save the two co-operatively-organized market agencies, produce an aggregate supposititious handling cost, including return on investment, which is $607,321.32 less than the aggregate costs found to exist in the actual operation of the business by the petitioner's accountant, and $422,071.95 less than the aggregate costs and expenses recognized by the Government's Chief Accountant to have been encountered by these agencies in the actual rendition of stockyard services. The costs and expenses recognized by the Government's accountant (R. Exhibit 115) include no expenses incident to bad debts, refused purchases, interest paid, errors in accounting, donations to Community Chests, or reserve to meet uninsurable hazard ... no allowance for profits. After these eliminations, the costs recognized by Government accountants are as to all the respondents in the proceeding, including the two co-operatively-organized agencies, $459,200.73 in excess of the total cost fixed as reasonable by the Order. The complete lack of comparability between the unit functional costs and the total costs expressed in the Order and shown in evidence as applied to the fifty-nine respondents except the two co-operatives, is [fol. 21] demonstrated and shown on the statement herewith filed, made a part hereof, and marked Exhibit "C".

The separation of so-called species costs into functional costs, as for selling, yarding, office work, administration, business-getting, etc., was wholly arbitrary and not based on any natural segregations incident to the actual performance of these functions inasmuch as the same personnel and the same facilities were used very largely to perform all of these functions by petitioner and other respondents. These arbitrary bases of apportionment varied widely from the facts and were based wholly upon the judgment of the person who accomplished the segregation. The testimony of all accountants was to the effect that while aggregate operating costs could be stated with a fair degree of accuracy, functional costs were erroneous to the extent that the arbitrary and hypothetical bases of apportionment or segregation were unsound. The cost finding process in the

Order then proceeds to eliminate from these disintegrated or functional costs the portions thereof represented by salesmen's and buyers' compensation and business-getting and maintaining costs, and to substitute therefor arbitrary amounts representing but a small fraction of amounts eliminated. These disintegrated functional costs are then reintegrated on purely an arbitrary or judgment basis. The process employed served to bring about a magnification of errors inherent in the original functional cost separation. The reintegration process ignored the practical situation confronting this petitioner and other market agencies in that such agencies are compelled to operate as independent units handling all species in all kinds and sizes of [fol. 22] consignments. The selling costs are found to be unusually low in the case of agencies that have relatively high unit costs in respect to those expenses classified as business-getting and maintaining expenses. These functional costs were considered separately in the rate-making process used in the Order and, therefore, the connection between low selling costs and relatively high business-getting costs in some agencies was lost sight of and received no consideration in the formulation of total costs. Under this procedure, hypothesis rests upon hypothesis and conjecture is piled upon conjecture, to the end that the final result reached bears no resemblance whatever to the facts of the situation as shown by the evidence to exist. Neither the agencies handling average volume, nor any other agency, or class of agencies, including this petitioner, find their functional costs as set out within the range of the total unit cost denominated as reasonable by the Order. The result is an Order, as hereinafter stated, confiscatory of the property and livelihood of this petitioner, and evidences an erroneous conception and application of established rules of law and a complete disregard of all the cardinal principles of sound accounting and cost finding.

(b) The Order purports to allow, in Paragraphs 159 to 163, inclusive, reasonable costs per head to cover compensation for management. Said costs as allowed are, in fact, unjust, unreasonable, non-compensatory and non-reimbursible of expenses in good faith incurred by petitioner in that the bases stated for the calculation therefor in Paragraph 159 is the ascertained cost of management of the two co-operative respondent market agencies. Under all the evi-

[fol. 23] dence, the costs sustained by such agencies are not comparable with the necessary costs incident to the management of this petitioner's business by reason of the fact that the amount so stated applies to conditions and expenses of management dissimilar and noncomparable with those confronting this petitioner and all others of the respondents except said two co-operatively-organized concerns. This evidence shows that such co-operative associations are managed by their several Boards of Directors, no allowance for whose time and expenditures is included in the amount set out as basic in said Order, and receive in addition assistance from public employes in connection with matters affecting management, including employes of the Department of Agriculture, both in and out of Washington, D. C., the expense of which is not included in the amount stated or estimated by said Order. The statement contained in Paragraph 159 of said Order, to the effect that reasonable rates "should provide also a per head profit, that is, compensation for management and the carrying of uninsurable risks", is based upon an erroneous conception of law in that fair compensation for management and expenses incident to carrying uninsurable risks does not constitute profit, but constitutes, and is, expense. The Order in purporting to allow in the ascertainment of per head costs, for reasonable profits or margin of profits in respect to selling or buying each species of livestock, yet failing so to do, is inconsistent and erroneous.

(c) The Order erroneously failed to allow as an element and part of the capital of this petitioner and upon which a [fol. 24] return is allowed by said Order, any amount representative of going concern value as shown to exist by the evidence taken at the hearing. The Order holds that a rate of return of 6% on fixed capital and 7% on working capital used by petitioner was reasonable and allows that amount only in calculating the gross return recognized by the Order and covered into the rates and charges established. The total return on invested capital for fifty-nine of the respondents, except co-operatives, amounts to $49,164.88, whereas this petitioner and other respondents, in accordance with their respective use and employment of capital, were lawfully entitled to a return thereon of not less than $59,719.21. The Order is in conflict with the uncontradicted testimony of many witnesses, including expe-

rienced bankers and others familiar with financing market agency operation, to the effect that interest rates in excess of 8% per annum were reasonable and necessary in order to induce the investment of capital in the maintenance of the business of market agencies under the conditions existing in 1931 at the Kansas City Stock Yards.

(d) The Order erroneously fails to allow, as an element of the reasonable cost of operations of this petitioner and other respondents, expenses incident to obtaining insurance against normal risks and hazards encountered in the business, including insurance partially indemnifying the respondents against loss by reason of the liability imposed on respondents on account of the guaranty of title undertaken by respondents upon the sale and disposition of live-[fol. 25] stock. As to the fifty-nine respondents, except cooperatives, engaged in selling operations, the Order fails to recognize costs in this category aggregating $19,918.63 found to exist by the Government accountants and $11,245.60 found to exist by respondents' accountant.

(e) The Order, in disallowing as elements of reasonable cost and failing to cover into the rates and charges prescribed traveling expenses, dues and assessments necessary to the support of the Kansas City Live Stock Exchange, advertising expense, losses inevitably incident to errors in accounting processes, losses incident to insurable and uninsurable hazards, moneys expended for donations to the Community Chests maintained by the Chambers of Commerce in Kansas City, Missouri, and Kansas City, Kansas, losses incident to bank failures affecting the collection of items or remission of proceeds, amounts actually expended in the employment of salesmen necessary to efficiently handle and transact the stockyard services rendered, invades the right and authority of this petitioner to manage and conduct its own business inasmuch as all of such expenditures were actually made in good faith in the sound exercise of the best business judgment of petitioner developed as a result of practical experience of many years in the operation of a market agency at the Kansas City Stock Yards.

(f) The effect of the Schedule of Rates and Charges is to permit increases in rates to "dealers" registered under

the Packers and Stockyards Act, 1921, and to permit increases in the rates and charges for buying livestock. Such [fol. 26] rates are shown by all the evidence in the record to apply to stockyard services, the relative cost of which as compared with selling service does not justify such increases and the increases allowed are not collectible or realizable by this petitioner in the actual and practical conduct of its business. The effect of said Order is to increase buying rates to an extent approximately 40% in excess of the rates and charges for similar buying services of market agencies at Chicago, and establish as reasonable rates approximately 40% less than the rates for selling services at Chicago. An increase is permitted of approximately 40% in the present rates and charges for selling services rendered for "dealers." The rates so stated representing increases are merely "paper" rates and are not predicated on any fair consideration of the record or upon any cost accounting developed by the Order or evidence. An application of such rates to business handled by petitioner under existing circumstances would be impossible without petitioner encountering greater loss than gain. In the calculations contained in this petition as to the yield of the rates prescribed, these increases are not included. In such respects the said Order represents an unwarranted, injudicious and prejudicial attempt, without evidence, to readjust rates. The buying and dealers' rates so established are discriminatory and prejudicial, and if put in effect would create an obstruction to the flow of livestock in commerce at said stock yards in violation of the Packers and Stockyards Act, 1921.

VIII

The Schedule of Rates and Charges prescribed by the [fol. 27] Order is confiscatory as to this petitioner and takes the property of petitioner without due process of law in violation of the Fifth Amendment of the Constitution of the United States in that:

(a) The gross revenue which would have been received by petitioner in the year 1931 if said Schedule of Rates and Charges had been in force and effect would have amounted to $4623.96 less than the total calculable costs incurred by petitioner in the rendition of stockyard services (R. Ex-

hibit 207), and in that amount and to that extent the enforcement of the Order would wrongfully and unlawfully confiscate the property of this petitioner.

The confiscatory effect of the Schedule of Rates and Charges prescribed if presently applied to the business of petitioner would be further enhanced by reason of reduction in the gross revenue of petitioner due to diminution in volume of business handled. The gross yield to petitioner of the rates and charges collected was less in 1932 by 70% than the revenues received in 1931, and for the first five months of 1933 less by 5% than during the first five months of 1932. As applied to business of petitioner, the said Schedule of Rates and Charges would cause a further reduction in revenue in respect to cattle and calves of not less than —%, in respect to hogs of not less than —%, and in respect to sheep of not less than 13.59%.

(b) The gross yield of the rates and charges prescribed if applied in 1931 would have been less in amount than the [fol. 28] total costs of operation of petitioner's business recognized by the Government's Chief Accountant in the Cost Study introduced in evidence (R. Exhibit 115).

The confiscatory character of the Order is further disclosed by the fact that as to twenty out of the sixty-one respondents on the basis of the Government's own costs shown in evidence, which are referred to without prejudice, an operating deficit would be incurred, exclusive of any compensation whatsoever to owners for personal services rendered and any return on capital invested. As to hogs, thirty-nine of the respondents would sustain an operating deficit on the same basis, exclusive of any compensation to owners and return on capital. After allowing the inadequate return on capital provided by the Order, twenty-four of the respondents would sustain a net operating deficit on the basis of the Government's own showing and exclusive of any compensation to owners for personal services rendered. The amount remaining to provide compensation for the personal services of the 136 owners of respondents would provide an average annual total compensation per man of $174.50, or 48¢ per day. On the same basis the total compensation for the personal services rendered by the owners of petitioner would amount to $542.92 whereas the reasonable value thereof as shown by the evidence was $4,000.00 for one owner.

(c) The rates and charges ordered into effect are individually and severally confiscatory as applied separately to calves, yearling cattle, cattle, hogs and sheep, and each and all of said rates will fail to yield to this petitioner a fair and compensatory return for the stockyard services ren-
[fol. 29] dered by petitioner or a return commensurate with the value of the service rendered, and will not be reimbursible to the petitioner of the actual operating expenses necessarily incurred in the rendition of such services.

(d) The Order bases the rates and charges formulated upon the stated assumption that the respondents doing the largest relative volume of business operated their businesses more economically and efficiently than others of the respondents doing a lesser volume of business. On page 39, said Order refers to eleven agencies as having handled more than 50% of the total market volume of livestock at the Kansas City Stock Yards in 1931. The Schedule of Rates and Charges found reasonable by said Order on the basis of costs found to exist by the Government accountants and exclusive of any compensation whatsoever for the personal services rendered by the owners of said respondents, would have lacked $20,670.28 of meeting the inadequate allowance for return on capital investment provided for in the Order. The Order (page 23) mentions the fact that twenty-three agencies, inclusive of the eleven above referred to, handled more than 75% of the market volume as measured by equivalent carlots. The owners of these twenty-three respondents would have received under said rates on the Government's own showing (Exhibit 115) no compensation whatsoever for personal services rendered and a return on capital invested amounting to only 60% of the inadequate return allowed by the Order.

(e) The net operating loss sustained upon the basis of the Government's own cost showing by the two co-operatively organized agencies would have been respectively
[fol. 30] $22,782.76 and $14,346.02.

IX

The Secretary erroneously and improperly overruled and denied the Petition for Re-investigation and Re-hearing (Exhibit "B") filed herewith and made a part hereof. Petitioner states that in and by said Petition for Re-investiga-

tion and Re-Hearing the Secretary was advised that economic changes affecting petitioner of radical and far-reaching character and effect had occurred since the taking of evidence at the hearings hereinbefore referred to and prior to June 14, 1933, the date of said Order, rendering the evidence so taken incomplete, inadequate and misleading as an expression of present or future conditions as to revenues, costs or volume handled by this petitioner. Petitioner re-asserts as grounds for the relief sought in the petition all of the allegations contained in said Petition for Re-investigation and Re-hearing, to the same effect as if fully set out in this petition.

Your petitioner states that the failure on the part of the petitioner to comply with such purported Order of the Secretary may subject petitioner to prosecution and liability for penalties in large amounts as against which liability your petitioner will have no adequate protection at law and may subject it to multifarious and vexatious suits for reparation on the part of various shippers of livestock. Should your petitioner attempt to avoid liability for penal- [fol. 31] ties under duress and publish and establish the rates specified in the Order of said Secretary, petitioner will be required by law to collect such rates, which in many instances will result in reductions in the revenues of your petitioner, and if later on it should be determined that said Order of the Secretary is null and void, your petitioner would be without means of collecting the difference between said rates prescribed by said Secretary and the present rates without multifarious suits and actions at law, impractical in character, against those shippers to whom such reductions apply. Your petitioner will, therefore, unless the said purported Order is suspended, enjoined, set aside and annulled, and if pending final determination whether or not its enforcement is not temporarily stayed and suspended, suffer irreparable injury, for which it would be without adequate remedy or protection at law.

Wherefore, petitioner prays:

(1) That a writ of subpoena issue immediately out of and under the seal of this Court, and be directed to said defendants, the United States of America and the Secretary of Agriculture, requiring said defendants, on a day certain therein to be specified, to be and appear before this Court

and to answer this bill, but not under oath, answer under oath being hereby expressly waived;

(2) That this Court direct that due and proper notice of this petition and proceeding issue and be served forthwith, as prescribed in said Act of October 22, 1913 (28 U. S. C. A., Secs. 41 (28) and 43 to 48, inclusive);

(3) That a court constituted as required by said Act of [fols. 32 & 33] October 22, 1913 (28 U. S. C. A., Sec. 47) be convened and that said court so constituted and convened shall hear this petition upon due and legal notice to defendants;

(4) That upon the filing of this bill, the Judge of this Court shall call to his assistance two other judges, one of whom shall be a Circuit Judge, and that upon three days' notice to defendants, this Court shall enter its order staying and suspending the enforcement, operation or execution of said Order of said Secretary, and each and every part thereof, for sixty days from the date of said Order; and that after five days' notice of the time and place of hearing having been given to defendants, petitioner herein be granted a temporary injunction restraining the Secretary of Agriculture and the United States from enforcement of said Order of June 14, 1933;

(5) That this Court, upon final hearing of this suit, enter a decree herein permanently suspending, enjoining, setting aside and annulling said Order of said Secretary;

(6) That petitioner have and recover of the defendants the proper costs of this suit; and

(7) That the petitioner have such other and further general relief in the premises as may to the Court be deemed just and equitable.

John B. Gage, Solicitor for Petitioner.

Duly sworn to by John B. Gage. Jurat omitted in printing.

[fol. 34] EXHIBIT "A" TO PETITION

UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE, BUREAU OF ANIMAL INDUSTRY

Proceedings, Findings of Fact, Conclusion and Order

Docket No. 311

SECRETARY OF AGRICULTURE

vs.

L. B. ANDREWS, Doing Business as L. B. Andrews Livestock Commission Company; A. B. Bachman, Doing Business as A. B. Bachman Livestock Commission Company; W. N. Baucus and Ira Kimmons, a Partnership Doing Business as Baucus & Company; Charles N. Bird; Charles E. Blount, Doing Business as Charles E. Blount & Company; Frank Boddington, Doing Business as Frank Boddington Livestock Commission Company; Bowles Livestock Commission Company; Burlington Livestock Commission Company; Henry F. Carnes, Doing Business as Henry F. Carnes Livestock Commission Company; Cassidy Southwestern Commission Company; John Clay, F. H. Connor, C. A. Klemen, and J. G. Forrest, a Partnership Doing Business as John Clay & Company; Crider Brothers Commission Company; Warren Cummings, Doing Business as Warren Cummings Livestock Commission Company; W. E. Curtis, Doing Business as W. E. Curtis & Company; Charles Dixon Commission Company; E. R. Corrigan and Karl N. Soeder, a Partnership, Doing Business as Corrigan & Soeder; Drumm Standish Commission Company; Ehrke-Martin Livestock Commission Company; E. W. Elliott and R. K. Swain, a Partnership Doing Business as Elliott, Swain & Company; [fol. 35] Farmers Union Livestock Commission; Farrar, Davis & Campbell Livestock Commission Company; Link Fasken, Doing Business as Link Fasken Commission Company; Gillespie & Jones Livestock Commission Company; W. G. Gladish, Doing Business as Gladish Livestock Commission Company; E. W. Goodson, G. E. Goodson, and O. C. Green, a Partnership Doing Business as

Goodson-Green Company; Norman B. Greer, Doing Business as Greer & Company; O. C. Haggart, John H. Wilson, and Glenn Haggart, a Partnership Doing Business as Haggart, Wilson Livestock Commission Company; W. F. Humphrey, Doing Business as W. F. Humphrey & Company; Inman-Hutton Livestock Commission Company; W. E. Burrus, Doing Business as Interstate Livestock Commission Company; J. G. Jackson; Jefferson-Lowry-Davis Commission Company; W. M. Liggett and Roy K. Sanson, a Partnership Doing Business as Kansas City Livestock Commission Company; Harry Kennaley, Doing Business as Harry Kennaley Commission Company; W. C. Kile, Doing Business as W. C. Kile Livestock Commission Company; H. H. Klecker, Doing Business as Hinie Klecker Sheep Commission Company; E. L. Knight and E. Tice, a Partnership Doing Business as Knight & Tice Sheep Commission Company; Harmon C. Knighton, Doing Business as Ham Knighton Commission Company; S. Kraus; J. M. Laird, G. T. Laird, and H. E. Laird, a Partnership Doing Business as Laird Bros. Livestock Commission Company; Walter G. Land, Doing Business as Walter G. Land Livestock Commission Company; W. M. Leitch Sheep Commission Company; L. Levy; R. H. Lewis and S. H. Flournoy, a [fol. 36] Partnership Doing Business as Lewis-Flournoy Livestock Commission Company; A. E. Long and Robert B. Perry, a Partnership Doing Business as Long-Perry Livestock Commission Company; Martin Bros. & Lee Livestock Commission Company; A. J. Maurer; Grover C. Maxwell, Doing Business as Grover C. Maxwell Commission Company; H. B. Dorsett, Doing Business as M. K. & T. Commission Company; T. S. Moffett, H. M. Baker, and J. M. McLain, a Partnership Doing Business as Moffett Livestock Commission Company; Fred O. Morgan, Doing Business as Fred O. Morgan Commission Company; Jay D. McCormick, Doing Business as Jay D. McCormick Livestock Commission Company; McDonald Livestock Commission Company; Roy W. Nance, Doing Business as Roy W. Nance Livestock Commission Company; National Livestock Commission Company of Kansas City; John M. Nichols, Doing Business as John M. Nichols Livestock Commission Company; E. E. Sutton, Doing Business as O. K. Cattle

Company; W. O. Park; W. H. Peed, Doing Business as W. H. Peed Livestock Commission Company; K. L. Peterson and W. F. Humphrey, a Partnership Doing Business as K. L. Peterson & Company; Bryant Poole, D. L. Dempsey, and James Rutherford, a Partnership Doing Business as Poole-Dempsey-Rutherford Livestock Commission Company; Producers Commission Association; J. M. Ragland, W. B. Storts, and W. L. Burrus, a Partnership Doing Business as Ragland, Storts & Burrus; M. W. Rice and George E. Kirk, a Partnership Doing Business as Rice & Kirk; George P. Robinson and Joe R. Hoover, a Partnership Doing Business as Robinson-Hoover Commission Company; F. W. Banks and C. [fol. 37] A. Rountree, a Partnership Doing Business as Rountree-Banks; Ryan-Robinson Commission Company; Fern O. Sanders, Doing Business as Fern O. Sanders Livestock Commission Company; William M. Schwartz, Joseph M. Nolan, and Laurence Feaman, Jr., a Partnership Doing Business as Schwartz-Feaman-Nolan Company; E. F. Searls, Doing Business as George W. Searls & Son; The Stagner, Pieronnet & Willis Livestock Commission Company; B. C. Stanley, Doing Business as Stanley Commission Company; C. A. Stuart, Doing Business as C. A. Stuart & Company; Swift & Henry Livestock Commission Company; George S. Tamblyn, Doing Business as Tamblyn Commission Company; L. Knop, Henry F. Thies, E. J. Thies, F. W. Thies, and A. C. Thies, a Partnership Doing Business as H. Thies & Sons; Ben L. Welch, Doing Business as Welch Livestock Commission Company; Dan Wester, R. W. Wester, and Joseph Smith, a Partnership Doing Business as Wester Bros. & Smith Commission Company; J. Less White, Doing Business as Less White Livestock Commission Company; Wilson, Egan & Company; Witherspoon Livestock Commission Company; Curtis A. Wood; W. E. Woodford, Doing Business as W. E. Woodford Livestock Commission Company; Ralph W. Wright; Ralph W. Wright and Wm. N. Baucus, Partners, Doing Business as Wright and Baucus Livestock Commission Company; John Clay, F. H. Connor, Alan F. Wilson and Chas. G. Smith, Partners, Doing Business as John Clay and Company; L. E. Tice, Doing Business as Knight & Tice Sheep Commission Company; J. M. Laird and G. T. Laird, Partners,

Doing Business as Laird Bros. Livestock Commission [fol. 38] Company; Walter G. Land and John E. Maze, Partners, Doing Business as Walter G. Land Livestock Commission Company; Charles F. Vieregg and Robert H. Stover, Partners, Doing Business as W. M. Leitch Sheep Commission Company; H. E. Long, Robert B. Perry and B. W. Perry, Partners, Doing Business as Long-Perry Livestock Commission Company; Martin, Blomquist & Lee Commission Company, a Corporation; Grover C. Maxwell and Ben J. Furnish, Partners, Doing Business as Maxwell & Furnish Livestock Commission Company; H. M. Baker, W. C. Bradshaw, Barney Metz and Louize McGrew Moffett, a Partnership, Doing Business as the Moffett Livestock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, Partners, Doing Business as the Ragland, Storts and Burrus Livestock Commission Company; Laurence Feaman and J. M. Nolan, Partners, Doing Business as Feaman and Nolan; Stuart-Robinson-Hoover Company, a Corporation; J. Less White and O. C. Seamans, a Partnership, Doing Business as the Less White & Seamans Livestock Commission Company; R. W. Wester and Joseph P. Smith, Partners, Doing Business as Wester Bros. & Smith Commission Company; Clay W. Stephenson and T. Ray Graybill, Partners, Doing Business as Graybill and Stephenson; Great Western Order Buying Company, a Corporation; Dave Hamer, Doing Business as Dave Hamer Livestock Commission Company, and Harry Conley, W. H. Cripe and J. Ed Freed, Respondents

Proceedings

1. This is a proceeding under Title III of the Packers and Stockyards Act, 1921, instituted by the Secretary of Agriculture according to his order of April 7, 1930. By this order of inquiry and notice of hearing the Secretary of Agriculture directed that an inquiry be made into the reasonableness and lawfulness of all rates and charges provided in the tariffs of the respondent market agencies at the Kansas City Stockyard, Kansas City, Missouri.

[fol. 39] 2. Said order of inquiry and notice alleged that the respondents were registered and doing business under the Packers and Stockyards Act, 1921, as marget agencies

engaged in the business of buying and/or selling livestock on a commission basis at the Kansas City Stockyard in Kansas City, Missouri, which has been found by the Secretary of Agriculture to be a "stockyard" as that term is defined in Title III of the Act and posted as such; that in accordance with the requirements of said Act respondents had theretofore filed, published, and put into effect a schedule of rates and charges for their services as market agencies as set forth in their tariffs and supplements thereto; that the interest of shippers, producers of livestock who patronize respondent agencies and the public generally require that inquiry be instituted under Title III of the Act for the purpose of determining the reasonableness and lawfulness of the rates and charges of all respondents named therein as set forth in their tariffs and supplements thereto.

3. Notice of such hearing was given to the respondents by serving upon them a copy of said order and notice. Pursuant to this order and notice a hearing was held at Kansas City, Missouri; before an examiner designated by the Secretary of Agriculture and said hearing began on December 3, 1930, and concluded on February 10, 1931. The respondents who were members of the Kansas City Livestock Exchange were present by counsel throughout the hearing. The following respondents were not present by counsel: The Farmers Union Livestock Commission and the Producers Commission Association, whose respective managers entered their appearance at the hearing; E. W. Goodson, G. E. Goodson, and O. C. Green, a partnership doing business as Goodson-Green Company who were succeeded by O. C. Green and Robert Coble, a partnership doing business as Goodson-Green Company; J. G. Jackson; W. O. Park; E. F. Searls doing business as Geo. W. Searls and Son; and Curtis A. Wood. The following respondents had ceased to do business on the Kansas City market at the time the hearing commenced: A. B. Bachman, doing business as A. B. Bachman Livestock Commission Company; Charles N. Bird; S. Kraus; L. Levy; H. B. Dorsett doing business as M. K. and T. Commission Company; Roy W. Nance, doing business as Roy W. Nance Livestock Commission Company; E. E. Sutton, doing business as O. K. Cattle Company; F. W. Banks and C. A. Rountree, a partnership doing business as Rountree-Banks; and W. E. Woodford, doing business as W. E. Woodford Livestock

Commission Company. Certain changes in the organization of the respondents had taken place as follows: Charles E. Blount, doing business as Charles E. Blount and Company, was succeeded by Charles E. Blount and Earnest E. Skaggs, doing business as Blount-Skaggs Company; John Clay, F. H. Conner, C. A. Klemen and J. G. Forrest, a partnership doing business as John Clay and Company, succeeded by John Clay, F. H. Conner, A. F. Wilson and C. G. Smith, a partnership doing business as John Clay and Company; W. M. Liggett and Roy K. Sanson, a partnership doing business as Kansas City Livestock Commission Company, succeeded by W. M. Liggett, doing business as the Kansas City Livestock Commission Company; E. L. Knight and Lawrence E. Tice, a partnership doing business as Knight and Tice Sheep Commission Company, succeeded by Lawrence E. Tice, doing business as Knight and Tice Sheep Commission Company; J. M. Laird, G. T. Laird, and H. E. Laird, a partnership doing business as Laird Brothers Livestock Commission Company, succeeded by J. M. Laird, and G. T. Laird, a partnership doing business as Laird Brothers Livestock Commission Company; W. M. Leitch Sheep Commission Company, succeeded by Charles F. Vieregg and [fol. 40] Robert H. Stover, a partnership doing business as the W. M. Leitch Sheep Commission Company; A. E. Long, and Robert B. Perry, a partnership doing business as Long-Perry Livestock Commission Company, succeeded by A. E. Long, Robert B. Perry, and B. A. Perry, a partnership doing business as Long-Perry Livestock Commission Company; K. L. Peterson and W. F. Humphrey, a partnership doing business as K. L. Peterson and Company, succeeded by K. L. Peterson, doing business as K. L. Peterson and Company. Counsel for respondent market agencies who are members of the Kansas City Livestock Exchange entered appearances for these firms whose organization had been changed.

4. Oral argument was had before the Acting Secretary of Agriculture on March 27, 1931, and respondents' counsel submitted a brief on behalf of the members of the Exchange.

5. On May 18, 1932, the Acting Secretary of Agriculture issued an order directing that on and after thirty (30) days from the date of the order the respondent market

agencies and each of them cease and desist from demanding or collecting for any stockyard service the rate or charge shown therefor in the schedule of rates and charges then on file with the Secretary of Agriculture; that on and after said thirty days neither the respondent market agencies nor any of them should publish, demand or collect any rate or charge for the furnishing of any stockyard service in excess of the rate or charge deemed in said order to be just, reasonable and non-discriminatory for the furnishing of such service; that at least ten days prior to the date on which said order would become effective each and every of the respondent market agencies publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule showing all rates and charges for the stockyard services furnished by such respondent at the Kansas City Stockyard, Kansas City, Missouri, and all rules and regulations changing, affecting or determining such rates or charges, and that no rate or charge so shown for any such stockyard services be in excess of the rate or charge determined by said order to be just, reasonable and non-discriminatory for such service. The effective date of the order was thereafter extended to July 18, 1932.

6. On May 26, 1932, many of the respondents filed petitions alleging in detail the general economic changes which had developed in the United States since the year 1929, that being the year of the specific financial experience of respondents which the Secretary had used in the determination of the reasonableness of respondents' rates, and further alleging in detail the particular effect upon the business of such market agency of said general changes, especially with respect to the volume of business handled by each of such market agencies. Each of the petitions prayed that the order of the Acting Secretary of Agriculture, dated May 18, 1932, be withdrawn and that this proceeding be reopened for reinvestigation of the matters and things referred to in the order of inquiry and be set down for further hearing upon the subjects set forth in the aforesaid petitions.

7. On May 11, 1932, and prior to the issuance of the order of May 18, 1932, and the filing of said petitions, each

and every of the petitioning market agencies filed with the Secretary, to become effective May 23, 1932, a schedule showing either expressly or by reference all rates and charges for the stockyard services furnished by such market agencies at the Kansas City Stockyard, Kansas City, [fol. 41] Missouri, each of which schedules has for convenience been designated "Kansas City Livestock Exchange Tariff No. 3", and has been in force and effect since said 23rd day of May, 1932.

8. In view of the decision of the Supreme Court of the United States in the case of Atchison, Topeka & Santa Fe Ry. Co. v. United States, 284 U. S. 248, and of the District Court of the United States for the Western District of Missouri in the case of St. Joseph Stockyards Company v. the United States 58 Fed (2d) 290, the Secretary was of the opinion that it was his duty under the law to reopen this docket and hold a rehearing to the end that all parties in interest might be given opportunity to present such evidence of changes both general and particular as have occurred since the year 1929 and are material to the issues raised by the Order of Inquiry herein, and also to the end that all parties might have opportunity to present such other things as might be material to said issues; and further to the end that a general inquiry might be had into the reasonableness and lawfulness of each and every rate and charge, and each and every rule and regulation affecting any rate or charge stated in said new schedules known as Kansas City Livestock Exchange Tariff No. 3 and in the new schedules filed by the Farmers Union Live Stock Commission and the Producers Commission Association, respectively, on June 10, 1932, as aforesaid, and in any and all schedules of market agencies in effect at said Kansas City Stockyard at the time of the rehearing ordered by the Secretary. Accordingly, the Secretary, by an order dated July 15, 1932, vacated the aforesaid order of May 18, 1932, and directed a rehearing for the purposes aforesaid.

9. The rehearing ordered as above stated was held at the Kansas City Athletic Club Building in Kansas City, Missouri, by adjournment from the Federal Building in said city. The hearing began on the 6th day of October and was concluded on November 16, 1932.

10. By the order of July 15, 1932, granting a rehearing herein, the following additional parties were made respondents in the cause, namely: Ralph W. Wright and Wm. N. Baucus, partners doing business as Wright and Baucus Livestock Commission Company; John Clay, F. H. Connor, Alan F. Wilson and Chas. G. Smith, partners, doing business as John Clay and Company; L. E. Tice, doing business as Knight & Tice Sheep Commission Company; J. M. Laird and G. T. Laird, partners doing business as Laird Bros. Live Stock Commission Company; Walter G. Land and John E. Maze, partners doing business as Walter G. Land Live Stock Commission Company; Charles F. Vieregg and Robert H. Stover, partners doing business as W. M. Leitch Sheep Commission Company; H. E. Long, Robert B. Perry and B. W. Perry, partners doing business as Long-Perry Live Stock Commission Company; Martin, Blomquist & Lee Commission Company, a corporation; Grover C. Maxwell and Ben J. Furnish, partners doing business as Maxwell & Furnish Livestock Commission Company; H. M. Baker, W. C. Bradshaw, Barney Metz, and Louize McGrew Moffett, a partnership doing business as the Moffett Live Stock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, partners doing business as the Ragland, Storts and Burrus Live Stock Commission Company; Laurence Feaman and J. M. Nolan, partners doing business as Feaman and Nolan; Stuart-Robinson-Hoover Company, a corporation; J. Less White and O. C. Seamans, a partnership, doing business as the Less White & Seamans Live Stock Commission Company; R. W. Wester and Joseph P. Smith, partners, doing business as Wester Bros. & Smith Commission Company; Clay W. Stephenson and T. Ray Graybill, partners, doing business as Graybill and Stephenson; Great Western Order [fol. 42] Buying Company, a corporation; Dave Hamer, doing business as Dave Hamer Live Stock Commission Company; Harry Conley, W. H. Cripe, and J. Ed Freed.

11. At the time of the rehearing in this cause above described, the following respondents were not engaged in business at the Kansas City Stockyard: L. B. Andrews, doing business as L. B. Andrews Live Stock Commission Company; A. B. Bachman, doing business as A. B. Bachman Live Stock Commission Company; Charles N. Bird; Charles E. Blount, doing business as Charles E. Blount & Com-

pany; Gillespie & Jones Live Stock Commission Company; E. W. Goodson, G. E. Goodson, and O. C. Green, a partnership doing business as Goodson-Green Company; W. E. Burrus, doing business as Interstate Live Stock Commission Company; S. Kraus; L. Levy; H. B. Dorsett, doing business as M. K. & T. Commission Company; Roy W. Nance, doing business as Roy W. Nance Live Stock Commission Company; E. E. Sutton, doing business as O. K. Cattle Company; George P. Robinson and Joe R. Hoover, a partnership doing business as Robinson-Hoover Commission Company; F. W. Banks and C. A. Rountree, a partnership doing business as Rountree-Banks; E. F. Searls, doing business as George W. Searls & Son; Curtis A. Wood; W. E. Woodford, doing business as W. E. Woodford Live Stock Commission Company; and Ralph W. Wright.

12. By reason of changes in their organization, the following respondents had at the time of the rehearing herein ceased to engage in business at the Kansas City Stock Yards under the firm name and style under which they were named as parties respondent in this proceeding: W. N. Baucus and Ira Kimmons, a partnership doing business as Baucus and Company; John Clay, F. H. Connor, C. A. Klemen, and J. G. Forrest, a partnership doing business as John Clay & Company; E. L. Knight and E. Tice, a partnership doing business as Knight & Tice Sheep Commission Company; J. M. Laird, G. T. Laird, and H. E. Laird, a partnership doing business as Laird Bros. Live Stock Commission Company; Walter G. Land, doing business as Walter G. Land Live Stock Commission Company; W. M. Leitch Sheep Commission Company; A. E. Long and Robert B. Perry, a partnership doing business as Long-Perry Live Stock Commission Company; Martin Bros. & Lee Live Stock Commission Company; Grover C. Maxwell, doing business as the Grover C. Maxwell Commission Company; T. S. Moffett, H. M. Baker, and J. M. McLain, a partnership doing business as Moffett Live Stock Commission Company; J. M. Ragland, W. B. Storts, and W. L. Burrus, a partnership doing business as Ragland, Storts and Burrus; William M. Schwartz, Joseph M. Nolan, and Laurence Feaman, Jr., a partnership doing business as Schwartz-Feaman-Nolan Company; C. A. Stuart, doing business as C. A. Stuart & Company; J. Less White, doing

business as Less White Live Stock Commission Company; and Dan Wester, R. W. Wester, and Joseph Smith, a partnership doing business as Wester Bros. & Smith Commission Company. Frank Boddington, doing business as the Boddington Live Stock Commission Company, a respondent in this proceeding, died on October 14, 1932.

13. It appears of record that at the rehearing described in paragraph 9 hereof, all respondents were present by counsel except Farmers Union Livestock Commission; J. G. Jackson; McDonald Live Stock Commission Company; W. O. Park; K. L. Peterson, doing business as K. L. Peterson Order Buying Company; Producers Commission Association; M. W. Rice and George E. Kirk, a partnership doing business as Rice & Kirk; Harry Conley; W. H. Cripe; and J. Ed Freed.

[fol. 43] 14. It also appears of record that Farmers Union Live Stock Commission; McDonald Live Stock Commission Company; K. L. Peterson, doing business as K. L. Peterson & Company; Producers Commission Association; Harry Conley; and W. H. Cripe, were duly served with a copy of the aforesaid order granting a rehearing in this cause. It does not appear of record that either J. G. Jackson; W. O. Parke; M. W. Rice and George E. Kirk, a partnership doing business as Rice and Kirk; J. Ed Freed, or any of them, were either present at the rehearing in person or by counsel or were served with a copy of the order granting rehearing herein. However, it does appear that John B. Gage, Esq., Attorney-at-law of Kansas City, Missouri, who appeared for most of the respondents, both at the original and the rehearing, announced at the original hearing that he represented M. W. Rice and George E. Kirk, a partnership doing business as Rice and Kirk, and there is nothing in the record of the rehearing to negative the continuance of such representation except that said record fails to show the inclusion of these respondents in the list of those stated by Mr. Gage as being represented by him.

15. Oral argument on the basis of the record made at the original hearing and at the rehearing was had before the Acting Secretary of Agriculture on March 24, 1933. Respondents' counsel was given until April 15, 1933, to file a brief, and so filed it.

Findings of Fact

Upon careful consideration of the entire record in this proceeding, the following findings of fact and conclusions are made:

I. The Kansas City Livestock Market

16. The Kansas City Stock Yards Company maintains and operates a stockyard at Kansas City, Mo., at which a public market is conducted. This market was established in 1871 and has grown in importance as the production of livestock has expanded and improved in the territory tributary to Kansas City, until it has become one of the leading livestock markets in the United States. A stockyard is a place where producers and others ship their livestock by rail, or by truck, or drive them in on foot, to be offered for sale to the various classes of buyers who resort there to buy the grades and classes of livestock to meet their requirements.

17. The geographical location of the Kansas City market makes it a gateway through which much of the livestock produced in the West and Southwest passes on its way to the feed lots in the Central West and the consuming centers in the East. Considerable numbers of hogs and sheep are sold at the Kansas City Market, but its primary eminence is as a cattle market. It is the largest stocker and feeder cattle market in the world.

[fol. 44] II. Origin of Receipts of Livestock

18. The points of origin of receipts of cattle at the Kansas City market lie principally in the States of Kansas, Nebraska, Colorado, Arizona, New Mexico, Texas, Oklahoma, Arkansas, Missouri and Idaho. The territory in which the drawing power of the Kansas City market is distinctly greater than that of its principal competing central markets is made up of the State of Kansas, the most southerly tier of counties in Nebraska, the counties of southeastern Colorado, those of the eastern half of New Mexico, those of the northern portion of Texas, the State of Oklahoma, the counties of western Arkansas, and those of the most westerly portions of Missouri. The hogs arriving at the Kansas City market originate in a more restricted area

than do the cattle and sheep. The hog territory may be defined generally as the State of Kansas, south central Nebraska, northern Texas, eastern Oklahoma, western Arkansas, and the counties located in the western third of Missouri. The sheep arriving at the Kansas City market originate in a wide area, embracing the State of Kansas, Colorado, New Mexico, Arizona, Texas, Oklahoma, Missouri, and to some extent the far western and northwestern States.

19. Ordinarily, livestock tends to move from the producer to the consumer by that route which is most economical. The trade territory of a market is determined largely by those factors which make it the most economical center to, through, and from which to move the livestock. One of the chief factors delimiting the trade territory of a market is the rate structure of the railroad transportation system which serves it. Generally speaking there is a normal trade territory for a livestock market, and this is true of the Kansas City market. Within this trade territory the Kansas City market comes into competition to a varying extent with other markets for the livestock in the counties and states from which it receives its livestock.

20. The following table gives by species the total number of livestock marketed from the seven states of Kansas, Texas, Oklahoma, Missouri, Nebraska, Colorado, and New Mexico at Kansas City and four of its principal competing central markets, and the percentage of the total marketed at each:

[fol. 45]

Cattle

Year	No. Marketed at 5 Markets	Per Cent Marketed at Kansas City	Per Cent Marketed at Chicago	Per Cent Marketed at Nat. Stkyds.	Per Cent Marketed at Omaha	Per Cent Marketed at St. Joseph
1920	4,864,862	49.5	3.0	14.5	21.4	11.6
1921	4,889,076	49.9	4.3	14.8	20.6	10.4
1922	5,803,333	50.4	3.7	13.9	21.4	10.6
1923	6,170,478	51.2	3.9	14.3	19.9	10.7
1924	6,202,311	48.4	5.0	14.3	21.3	11.0
1925	5,954,228	49.1	4.5	14.5	20.3	11.6
1926	5,778,123	44.7	5.2	16.5	22.6	11.0
1927	4,990,556	46.6	4.8	18.6	19.8	10.2
1928	4,844,510	44.9	5.7	15.5	22.3	11.6
1929	4,834,490	44.4	5.7	15.8	22.6	11.5
1930	4,888,804	44.0	4.9	16.3	23.9	10.9
1931	4,774,019	40.7	6.7	16.8	25.7	10.1

Hogs

Year	No. Marketed at 5 Markets	Per Cent Marketed at Kansas City	Per Cent Marketed at Chicago	Per Cent Marketed at Nat. Stkyds.	Per Cent Marketed at Omaha	Per Cent Marketed at St. Joseph
1920	7,030,618	32.1	0.8	18.9	27.4	20.8
1921	7,253,311	28.6	1.0	22.3	27.9	20.2
1922	8,413,567	28.8	1.6	23.0	26.3	20.3
1923	10,843,476	30.3	1.2	24.0	26.0	18.5
1924	10,400,432	26.3	0.9	24.0	29.9	18.9
1925	7,868,149	24.6	0.9	24.1	32.2	18.2
1926	6,980,344	27.6	0.7	25.8	28.2	17.7
1927	5,897,608	26.4	1.8	32.5	25.1	14.2
1928	8,362,044	28.1	1.1	24.8	27.6	18.4
1929	8,726,396	27.8	1.1	26.3	28.0	16.8
1930	7,995,230	24.9	0.8	25.6	32.1	16.6
1931	6,652,778	19.4	0.8	23.1	39.0	17.7
			Sheep			
1920	3,060,016	47.9	14.7	12.3	7.6	17.5
1921	3,715,856	42.3	22.1	12.2	7.1	16.3
1922	3,327,947	43.6	20.7	13.4	6.7	15.6
1923	3,743,367	38.7	21.8	10.3	11.1	18.1
1924	3,454,973	41.5	17.6	9.6	9.2	22.1
1925	3,355,277	40.0	15.3	10.4	11.2	23.1
1926	3,676,427	43.2	14.3	11.2	9.6	21.7
1927	3,088,669	43.0	16.6	11.1	8.1	21.2
1928	3,736,678	42.6	10.2	8.2	10.8	28.2
1929	3,729,764	42.7	8.2	9.2	11.0	28.9
1930	4,301,577	42.8	11.2	8.7	12.6	24.7
1931	4,540,010	45.8	11.8	10.1	9.6	22.7

[fol. 46] 21. The use of county lines defines trade territory more nearly precisely than does the use of state lines. The record shows for the year 1927 the counties of origin classified on the basis of the comparative drawing power of ten important markets; namely, Kansas City, Omaha, St. Joseph, Sioux City, St. Paul, Denver, Wichita, National Stockyards, Chicago, and Sioux Falls. Those counties which sent to the Kansas City public market a number of head of livestock representing from 75 to 100 percent of the total rail shipments to all these ten markets were placed in one classification, and those counties which sent from 50 to 75 percent to Kansas City in another. Other groupings were made of those counties in which the drawing power of Kansas City as compared with that of other markets was less pronounced. The results of this study of the rail receipts for the year 1927 are given in the following table:

	Total rail arrivals at the Kansas City public market from counties designated by percentage of Kansas City drawing power	The total rail arrivals at ten competitive markets, including Kansas City from these designated counties	The ratio of Kansas City rail arrivals from designated counties to total rail arrivals at the Kansas City public market (expressed as a percentage of the latter)
Cattle and calves			
75% to 100% counties	1,265,656	1,425,234	53.6%
50% to 75% counties	649,677	1,055,786	27.5%
Two combined (77% area)	1,915,333	2,481,020	81.1%
Other counties (22.5% area)	435,042		18.4%
Total receipts	2,350,375		99.5%
Hogs			
75% to 100% counties	578,091	641,599	36.2%
50% to 75% counties	444,568	720,847	27.8%
Two combined (75% area)	1,022,659	1,362,446	64%
Other counties (23% area)	542,695		34%
Total receipts	1,565,354		98%
Sheep			
75% to 100% counties	433,767	469,819	29.3%
50% to 75% counties	466,365	739,901	31.5%
Two combined (74% area)	900,132	1,209,720	60.8%
Other counties (22.5% area)	528,204		35.7%
Total receipts	1,428,336		96.5%

22. Within the trade territory made up of those counties which sent to the Kansas City stockyard from 50% to 100% of the livestock marketed by rail at the ten important markets, producers do not always send their livestock through the central markets. They may ship directly to packers located at Kansas City, packers whose [fol. 47] plants are not located at any central market, and to those located at points farther east. The record does not disclose the extent of sales at the so-called concentration points. It does show the direct purchases of the packers located in greater Kansas City from 1920 to 1931, inclusive, and for the first eight months of 1932. It shows also for 1931 the purchases by packers located away from Kansas City but in the 50% to 100% counties of the states immediately tributary to Kansas City. These purchases were as follows:

	Total	From public stockyards	Direct from country
Cattle	111,767	23,531	88,236
Calves	53,852	6,031	47,821
Hogs	1,934,394	71,160	1,863,234
Sheep	40,134	2,051	38,083

III. Manner of Arrival of Livestock at Market

23. Presently practically all livestock handled by respondents arrives at the Kansas City stockyard either in railroad cars or motor trucks.

24. Until comparatively recently arrivals of livestock were practically exclusively by rail. Formerly it was the custom of one owner to load one species in one or more railroad cars and consign such livestock to a market agency for sale. Under these conditions of transportation and ownership the consignment came to be thought of in terms of the straight car with single ownership and the rates were assessed in terms of cars. In those days multiple car consignments containing livestock of one species and ownership were much more common than at present, such consignments in train loads of 15 or more cars not being infrequent. With the more intensive settlement of the livestock producing territory tributary to Kansas City, with changes in transportation and marketing conditions, the custom arose not only of shipping consignments consisting of fewer cars but also of mixing species within a car and shipping in the same car livestock belonging to different owners. This brought about in the tariffs or schedules of charges rates per head of livestock to be applied to less than a carload of one species.

25. Not all of the cars used by the 13 railroads serving the Kansas City market are of the same length or same weight capacity. Some of the roads use 36-foot cars, others 40-foot cars. The custom has grown up on the part of those railroads using mainly 36-foot cars of furnishing two such cars when a 40-foot car is ordered by a shipper, and billing the two cars as one. The respondent market agencies assess their charges according to the billing. Some of the roads, in order to meet truck competition, have reduced the minimum weight allowable and have reduced their carload rates accordingly.

26. With the development of the motor truck and the construction of hard surfaced and other improved roads

leading from the producing areas to Kansas City, there came [fol. 48] another change in the manner of arrival of livestock at the market, namely, the gradual decrease in the percentage thereof arriving by rail and a corresponding increase in that coming in by truck. The record shows these percentages for each year from 1922 to 1931. It will be observed from the following table that in 1922 only .95 percent of cattle, 5.58 percent of calves, 5.49 percent of hogs, and 7.11 percent of sheep arrived by truck, while in 1931 the corresponding percentages were cattle 11.15 percent, calves 35.16 percent, hogs 51.55 percent, and sheep 13.39 percent.

Year	Cattle		Calves	
	Rail % of Total	Truck % of Total	Rail % of Total	Truck % of Total
1931	88.85	11.15	64.84	35.16
1930	92.19	7.81	72.99	27.01
1929	94.59	5.41	78.21	21.79
1928	96.62	3.38	82.40	17.60
1927	97.64	2.36	84.88	15.12
1926	98.16	1.84	86.34	13.66
1925	98.56	1.44	90.34	9.66
1924	98.93	1.07	92.84	7.16
1923	99.09	.91	93.65	6.35
1922	99.05	.95	94.42	5.58
	Hogs		Sheep	
1931	48.45	51.55	86.61	13.39
1930	60.78	39.22	88.83	11.17
1929	71.37	28.63	89.71	10.29
1928	78.00	22.00	91.99	8.01
1927	83.92	16.08	91.74	8.26
1926	88.45	11.55	93.75	6.25
1925	91.12	8.88	94.46	5.54
1924	93.28	6.72	94.74	5.26
1923	95.42	4.58	94.13	5.87
1922	94.51	5.49	92.89	7.11

The above stated percentages are calculated from the total receipts of livestock by rail and by truck, respectively, as compiled by the Kansas City Stock Yards Company. Those totals contain livestock such as that stopped at Kansas City for feed, water and rest, and that shipped direct to packers through the Kansas City stockyard, neither of which classes is handled by any of the respondents. The record shows the arrivals by rail and by truck, respectively, of the livestock handled by respondents for only the years 1929 and 1931. The following table shows the percentages arriving by rail and by truck, respectively, of the total fresh revenue producing receipts of livestock handled by respondents. By "total fresh revenue producing receipts"

is meant the total livestock on which respondents received commissions, exclusive of livestock bought, livestock handled for dealers, and livestock handled for other market agencies.

[fol. 49]

Year	Cattle		Calves	
	Rail % of Total	Truck % of Total	Rail % of Total	Truck % of Total
1929	94.21	5.79	74.71	25.29
1931	98.43	11.57	58.21	41.79
	Hogs		Sheep	
1929	67.25	32.75	90.77	9.23
1931	38.49	61.51	86.60	13.40

27. Comparison of the above percentages for the years 1929 and 1931 with those contained in the next preceding table indicates that a greater proportion of the livestock handled by respondents arrives by motor truck than is true of the total livestock which passes through the stockyard. Respondents' tariffs have contained for many years per head rates for selling livestock trucked or driven-in to the stockyard. Quite uniformly these rates have exceeded those charged per head for livestock arriving by other modes of transportation.

28. Not only changing modes of arrival but other factors, such as market demand and the customs of buyers, have caused the number of animals per consignment and per draft to decrease. In other words, increasingly respondents' business has taken on more of the aspects of the retail handling of a commodity. These changes have brought with them increasing costs per head of livestock handled, but such costs are included in those hereinafter stated in detail.

29. The foregoing developments caused the great majority of the respondents to reach the conclusion that tariff structures, which had had their inception in the days of the exclusive carload business and which, in spite of some modifications, were still based on the carload as the unit, had ceased to fit the business which respondents were doing. Accordingly, between the time of the first and the last hearing in this proceeding, those respondents filed their Tariff No. 3 which, to a considerable extent, discards the carload as the unit of charge and bases its rates on the

head of livestock of each particular species regardless of the mode by which such livestock arrived at the pens of the respective respondents.

IV. The Facilities of the Market Place

30. The Kansas City Stock Yards is located in Missouri and Kansas in that part of the central industrial district of Kansas City known as the "West Bottoms." The yard is divided into three sections. The west yard lines on the west side of Kansas River and was formerly used as a quarantine yard. The main yard lies on the east side of the Kansas River and includes the cattle, hog, sheep, and horse and mule divisions, in addition to the exchange and show buildings. The north yard lies north of the main yard and is connected with it by an underpass beneath the Union Pacific and Missouri Pacific railroad tracks. With rare exceptions, the buying and selling of livestock are carried on in the main yard.

[fol. 50] 31. The Kansas City market is served by 13 trunk line railroads and by the Kansas City Connecting Railroad, which owns rights-of-way, tracks, and loading and unloading docks and chutes, thus affording adequate transportation facilities in connection with the loading and unloading, receiving and delivering of livestock at the stockyard. It is the terminal carrier which forms the connection between the stockyard and all railroads entering Kansas City.

32. The main yard is generally triangular in shape, the base of the triangle being at the north end of the yard. There are five railroad docks on the west side of the main yard, extending in a north and south direction. Three of these docks lie between the river and the hog house, and two lie between the hog house and the cattle division. These five docks have approxmately 500 unloading chutes.

33. The hog house is a three-story structure, rectangular in shape, extending in a north and south direction between the two sets of railroad docks. The respondent commission firms use the pens on the second floor of the hog house for selling hogs. The ground floor is used for holding cattle which are not delivered to the respondent firms immediately upon arrival, and for holding livestock which is to be

shipped out of the yard. Those respondents who are engaged solely in the business of buying hogs on order use a part of the third floor of the hog house for sorting and preparing livestock for shipment. The remainder of the third floor is used for holding livestock to be delivered to packers, and a part of the roof of the hog house is covered with pens and used for the same purpose. The unloading docks and receiving pens for hogs arriving by truck are located in the north yard. Hogs unloaded there must be driven through the underpass which connects with the main yard at the north end of the hog house.

34. The cattle division lies between railroad dock No. 5 and the public thoroughfare which bounds the yard on the east. This division is not under roof and is on the ground floor. However, the scales are on viaducts, with the exception of two cattle scales which are on the surface in the traders' division. The pens and alleys in the north and, to some extent, the west part of this division are used by traders who buy and sell the different classes of cattle and calves. The commission division of the cattle yard is rectangular in shape, extending in a north and south direction, adjoining part of Dock No. 5 and part of the traders' division on the west. The respondent firms have pens assigned to them in this division, in which cattle and calves are exposed for sale. There are unloading docks and receiving pens at the north end of the main yard where cattle and calves are received from trucks and later driven to the commission division.

35. The sheep barns are located in the southern part of the main yard. There are three of these barns, each being a one-story structure. The unloading docks for drive-in sheep, and the sheep dipping vat are located in this division.

36. The plant and pens used in connection with the immunization of hogs are situated in the southwest corner of the cattle division. The dipping vat and branding chutes for cattle and calves are located in the north yard. There is also a stock hog division in the north yard where stock hogs [fol. 51] may be handled without the necessity of dipping and immunizing, if they are not brought into the main yard. This division is for the purpose of encouraging the movement of stocker and feeder hogs through the public

market. If such hogs are taken to the main yard to be sold or weighed, they must be dipped and immunized in accordance with State and Federal regulations.

37. The Kansas City Stock Yards Co. owns an office building, commonly called the Exchange Building, which is located midway on the east side of the cattle commission division. In addition to housing its own offices in this building, the company leases office space to respondents and others having business at the market. Opposite the Exchange Building and on the west side of this division is the train office building where the records of incoming and outgoing shipments are made. It is a sort of clearing house for the detailed information relative to the movement of livestock to and from the market.

38. Livestock arriving at the Kansas City market by rail is unloaded by employees of the stockyard company, which acts as agent for the carriers, who pay the company for this service. The loading and unloading facilities of the Kansas City Connecting Railroad are connected with an extensive system of viaducts, alleys, stock drives, subways, and bridges, which afford adequate facilities for receiving and distributing livestock to all parts of the stockyard.

39. In each division of the yard adequate scale facilities are provided by the stockyard company. There are three scales in the sheep division, one of which is designed for weighing truck consignments. There are 14 scales in the cattle commission division. These scales, the sorting and catch pens, and alleys used in connection therewith, are elevated above the pens and alleys on the ground level. They are reached by inclines and viaducts. These scales are arranged in pairs, one scale in each pair being called the "high line" scale and used for weighing drafts of 10 head or more, and the other the "jack pot" scale and used for weighing small drafts. At the west side of the cattle yard there is a small scale maintained for the purpose of weighing crippled hogs. There are five scales maintained in the hog commission division on the second floor of the hog house.

40. Upon the arrival of livestock by rail at the stockyard a waybill, representing each carload, is delivered by an employee of the railroad company to employees of the

stockyard company. Information as to the dock number, the time at which the train is set, names of consignor and consignee, the state of origin, car number, and class of livestock in the consignment is taken from the waybill and placed on the bulletin board by the stockyard company. These bulletins are hung in the lobby of the train office building, where they are consulted from time to time by representatives of the respondent firms for the purposes of ascertaining what livestock may have arrived consigned to them. After livestock is unloaded at the yard, the dock foreman, a stockyard employee, places a copy of the record of each car in a designated place in the chute alley, and representatives of commission firms consult these records to determine the location of livestock consigned to their respective firms.

[fol. 52] 41. Cattle and hogs arriving by rail are delivered to the respondent firms by the stockyard company at the unloading chutes. If their representatives are not at the unloading chutes to take delivery before the chute pens are needed for unloading other livestock, the stockyard company yards the livestock in convenient pens near by. Under such circumstances the hogs are usually taken to the pens on the second floor of the hog house, and cattle are yarded in pens on the ground floor of the hog house. The representatives of the respondents then call for the livestock at these divisions. Sheep arriving by rail are delivered to the respondents' pens in the sheep barns by the stockyard company. In the case of cattle and hogs arriving by truck, the respondents are required to drive the livestock to their own pens from the truck unloading chutes or near-by pens. Sheep arriving by truck are unloaded at a convenient place in the sheep division and are driven to the sale pens by the stockyard company.

42. The stockyard company tags all animals arriving crippled or dead, in order that they may be properly identified. There is an arrangement whereby a rendering company gathers up the dead animals and removes them to its plant, remittance therefor being made to the commission firms by the rendering company. Crippled hogs are gathered up by the stockyard company and delivered to a "crip" scale, where they are weighed and are then removed by the packers who purchase them. There are two

associations which engage in the business of handling crippled cattle and sheep from the yards direct to the packing plants. Such crippled livestock is purchased on a salvage basis, and remittance is made to the commission firms to which the livestock is consigned. These associations make a special charge for this hauling service. This charge is deducted from the proceeds of the sale of the animals.

43. The stockyard company furnishes all the feed fed in the yards. It delivers the feed to the commission men's pens and feeds the livestock. Water and facilities for watering in each pen are also provided by the stockyard company. Employees of the respondent commission firms turn the water on. It frequently happens that the stockyard company will turn the water off. The stockyard company cleans the pens and maintains tractors, trailers, and other necessary facilities for removing debris. In seasons of bad weather, or on other occasions, the respondent firms may clean their own pens. Such cleaning consists in throwing the manure to one side of the pen or under the troughs. The employees of the stockyard company remove it later.

44. The stockyard company maintains weighmasters who operate the various scales and issue scale tickets containing information relative to each draft weighed. It also provides a man who assists in putting the livestock on the scales to be weighed, and a suitable force of employees to receive and yard the livestock when it is driven off the scales.

45. For its services and use of its facilities heretofore described the stockyard company makes a yardage charge on a per head basis and a separate charge for feeding. Respondents deduct these charges from the gross proceeds of sale of the livestock and pay them to the stockyard company. Separate charges are made by the stockyard company for services and use of facilities in connection with the branding, dipping, testing, immunization, or other special services. Usually these special services are [fol. 53] required in connection with the movement of livestock from the market back to the country, and the charges therefor are paid by the purchasers. If for any reason any of these services should be required by the

shipper of livestock to market, the charges would be deducted from the proceeds of the sale of his livestock.

46. After livestock has been sold and weighed, it is yarded and held in pens by the stockyard company for delivery to the purchaser, or until it can be loaded, if it is to be shipped to points outside the market. If the livestock is to be shipped, the employees of the stockyard company load it on the cars. This service is rendered by the stockyard company as agent for the carrier, and a separate charge is paid by the carrier.

47. The Kansas City Stock Yards Co. endeavors through advertising and soliciting to induce shippers to consign their livestock to market for sale, and to attract buyers for such livestock. It maintains a force of employees in the country who make contacts with producers and growers of livestock. These men have knowledge of market conditions and the various grades and classes of livestock. The stockyard company maintains an information bureau which keeps in touch with the field representatives and gives them current market information. They assist farmers and producers in sorting and grading their livestock, disseminate useful market information, and endeavor to obtain shipments for the Kansas City market. They do not attempt to influence the shipment of livestock to any particular commission firm.

48. A branch of the United States Department of Agriculture maintains an office at the stockyard, which is a service organization having for its purpose the collection and dissemination of market information. This office maintains a bulletin board in the Exchange Building on which it posts information in regard to the estimated receipts at Kansas City, and other leading livestock markets of the country, the prices and trend of prices at the various markets, and the prices of dressed meats in Philadelphia, Boston and New York. Facts as to local market conditions are obtained by employees of that office, who are regularly assigned to different divisions of the yard for the purpose of making contacts with salesmen and buyers. A system of leased wires is maintained whereby similar facts are readily obtained from other markets. In addition to posting information from time to time on the bulletin board throughout the day, this office disseminates

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it by radio at three different periods, furnishes it to the telegraph companies and to the press associations, and publishes a mimeographed report, which circulates extensively among producers and others in Kansas, Missouri and, to a certain extent, in other states. The informational service of this office is available to all who request it.

V. Disposition of Livestock Receipts

49. Livestock received at the Kansas City market falls into two general classes: (1) stockers and feeders, and (2) killers or butcher livestock. The demand for the stockers and feeders comes principally from those producers who are equipped to feed and finish livestock, either in feed lots or on pasture lands. The livestock ready for slaughter [fol. 54] is purchased by local packers and butchers and by packers located at distant points. The chief outlet for this class of livestock is the local packer demand. Contiguous to the market are located the plants of the four large packers, Swift, Cudahy, Wilson and Armour. There are also small packers and local butchers who cater principally to the local demand for dressed meats and meat products. The outside packers usually make their purchases through order buyers, who are regularly engaged in that business at the market. Local packers and butchers are customarily represented on the market by salaried employees. Feeders and finishers generally purchase livestock through commission firms, although they sometimes make their own purchases. There are also dealers at the market who buy for the purpose of reselling at a profit, either on the Kansas City or some other market, without slaughtering, and also without feeding such livestock to any great extent. Although dealers operate to some extent in connection with the handling of all classes of livestock, their principal activity at the Kansas City market is in buying and selling stocker and feeder cattle. Their function is primarily that of buying unsorted lots and small lots of cattle, which they later sort into different grades and classes to meet the requirements of the feeders and finishers. The disposition of the livestock received at the Kansas City market each year from 1920 to 1931, inclusive, was as follows:

[fol. 55]

	Local Slaughter	Stocker and Feeder Shipments	Other Shipments
Cattle & Calves			
1931	850,553	653,457	440,339
1930	1,006,989	712,054	426,012
1929	1,046,799	729,480	378,908
1928	1,029,385	779,707	375,680
1927	1,335,552	755,867	356,610
1926	1,459,290	761,119	378,231
1925	1,631,058	907,686	381,764
1924	1,552,429	997,601	442,221
1923	1,559,364	1,161,540	437,806
1922	1,406,845	1,151,256	383,208
1921	1,199,693	787,904	456,454
1920	1,263,882	778,214	431,260
Hogs			
1931	836,655	54,852	443,994
1930	1,096,134	74,915	841,036
1929	1,454,334	104,097	907,374
1928	1,706,286	104,841	570,085
1927	1,385,208	98,310	411,963
1926	1,427,208	110,087	482,513
1925	1,236,506	66,528	764,856
1924	1,871,991	134,287	930,753
1923	2,721,412	282,900	606,340
1922	2,052,229	161,753	426,313
1921	1,712,834	93,505	392,910
1920	1,838,080	200,196	401,618
Sheep			
1931	1,433,778	257,774	563,279
1930	1,518,225	252,418	248,548
1929	1,290,177	261,722	196,120
1928	1,270,207	360,675	156,789
1927	1,124,604	353,591	137,927
1926	1,202,043	358,983	205,433
1925	1,045,517	318,655	140,256
1924	1,046,447	367,648	156,377
1923	1,100,978	406,930	147,139
1922	1,000,200	385,282	172,756
1921	1,307,428	324,150	160,512
1920	1,065,832	474,409	148,603

[fol. 56] The above table does not include direct shipments to packers except in those cases in which such shipments pass through the Kansas City stockyard. The direct shipments contained in the local slaughter of hogs shown above was for the same period as follows:

1931	180,000
1930	159,000
1929	373,171
1928	323,787
1927	226,831
1926	164,500

1925	182,458
1924	296,470
1923	332,709
1922	187,360
1921	153,461
1920	31,859

50. The demand for livestock in Kansas City, and especially that for hogs, is greater than that supplied by the livestock arriving at the public market. Large numbers of hogs destined for local slaughter in Kansas City do not pass through the stockyard. In addition to the hogs received through the stockyards at packers received at their plants located at Kansas City, 1,679,138 in 1929, 1,185,258 in 1930, 1,478,960 in 1931, and 1,319,519 from January to August, inclusive, 1932.

VI. Business in Which Respondents Are Engaged

51. In the early development of the West drovers were accustomed to bring their livestock to a convenient point at the junction of the Kansas and the Missouri rivers and there sell it. With the development of trading in livestock at this central point there grew up a more firmly established and permanent market place. Some of those who resorted there sold not only the livestock which belonged to them but undertook the selling of that belonging to others. Later resident selling agencies were developed which devoted their attention exclusively to the handling of livestock for others at the central market. While it is the privilege of the owner or shipper of livestock to the Kansas City public market to sell his own livestock, the complicated machinery of the market place, which the selling agencies and the stockyard company have worked out for their own convenience, make it a practical necessity for the producer to consign his livestock to some regular selling agency for sale. A like situation prevails with respect to many who seek to buy livestock on the market. They may neither be able to come to the market in person nor find it to their advantage to maintain employed buyers. A demand has developed, therefore, for the services of those who stand ready to act as representatives of the buyers on the market. There have come into

existence two somewhat distinct classes of operators. The first consists of what is commonly known as commission firms. They hold themselves out to the public both to sell and to buy livestock on a commission basis. Generally speaking, the buying operations of commission firms constitute a small part of their total business. The second [fol. 57] class is made of that group of respondents commonly known as order buyers. They specialize in buying livestock on order and do no selling on a commission basis.

52. The nature of the business in which the respondents are engaged is such that it may be carried on under different types of organization. Among the respondent firms there are individual proprietorships, partnerships and corporations. One of the respondent firms is operated as the branch house of a firm maintaining its principal headquarters at another market. Two of the respondents are organizations of producers engaged in operating on a cooperative plan. These return their profits, or a portion of them, if any, to the members on a patronage basis. Four of the respondent firms are registered to handle sheep only. All others engaged in selling and buying livestock hold themselves out to the public to handle cattle, calves, hogs and sheep. Some order buyers specialize in the handling of one species of livestock and others handle all species.

VII. Service Rendered by the Respondents

53. The livestock commission business carried on by the respondents is conducted on the premises of the stockyard company. The physical handling and caring for the animals and their selling and weighing, take place in pens belonging to the stockyard company and assigned by it to the various respondents. The office work growing out of the sale of the animals and the accounting to the owner for the proceeds of sale is carried on in the Exchange Building also owned by the stockyard company. The respondents do not pay for the use of the pens but pay rent for the office space which they occupy in the Exchange Building. The rendition of the services of selling and buying livestock makes it necessary for the respondents to employ assistants in the yard and in the office. There is a wide variation among the firms as to the character of

their organization and in the extent to which work can be specialized. A relatively small volume of business does not permit of that degree of specialization which is possible in the case of a firm which receives a large volume of business. Most of the larger firms have a separate department for each species of livestock handled and usually place a head salesman in charge of each department. In some instances divisions exist within a department as, for instance, in the case of those firms which handle a large volume of business. Such firms may have a fat steer division, a stocker and feeder division, a butcher cattle division, and a calf division. On the buying side of the market each buyer is generally looking for a specialized grade or class of livestock. Those packers who are represented by salaried buyers have special buyers for the different grades and classes of cattle. Specilization has not been carried to the extent in the case of hogs and sheep that it has in the case of cattle. Order buyers are usually in the market for distinct grades and classes of livestock. Dealers generally do not specialize to any great extent. Their market function is to buy mixed grades and classes of livestock and then to sort them in accordance with the needs of the trade. In some cases the owner, or owners, of a small firm do much of the yarding and office work in addition to the selling of the livestock.

[fol. 58] 54. The situation with respect to specialization among salesmen applies in general to the yarding and office work. The large firms divide their help into divisions in the cattle alleys and place each division in charge of a head yardman. In the larger firms the various office employees are frequently assigned to special tasks or departments under the supervision of an office manager. As a general rule the yard work is heaviest in the early part of the day and the office work heaviest in the latter part of it. Because of this, some of the office employees may assist in the yard work in the forenoon and some of the regular yard employees may help in the office in the afternoon. The organizations are flexible and permit a high degree of cooperation among the employees of a firm.

55. Some of the respondent firms do not have sufficient livestock of certain species to warrant the maintenance of a selling organization. Many firms, for instance, do not

have sheep salesmen. These firms engage the salesman of some other firm. This arrangement concentrates the selling and yarding of sheep in the hands of a comparatively few firms, and thus makes possible a high degree of efficiency. A firm which does not elect to sell the sheep consigned to it assesses the regular commission charge against the consignor and with a part of this revenue pays someone else for selling the sheep. Each firm handles all the office and accounting work growing out of the sale of sheep consigned to it. An arrangement similar to that described for the handling of sheep is sometimes entered into with respect to hogs and cattle, but in the case of the latter species the arrangement is less frequent than in the case of sheep. A few firms do not maintain their own office force but engage other respondent firms to do their office work for them.

56. Most of the livestock received for sale at the Kansas City market arrives during the early morning hours. It is important that the livestock be handled expeditiously in order that it may be watered, fed and sorted in time for the market. The bulletins prepared by the stockyard company with respect to the arrivals of livestock are hung in the train office building, and there respondents' employees go to obtain information as to arrivals. Frequently they obtain additional information in regard to consignments from letters, telephone calls, and personal contact with shippers. As soon as the information is obtained, the representative of the commission firm goes to the designated place near the track where the livestock is unloaded and obtains a chute slip showing the car number and the number of chute in which the stockyard company has placed the livestock.

57. Rail arrivals of sheep are driven from the unloading chutes to the pens of respondent market agencies, and formal delivery is made there. Cattle and hogs arriving by rail are delivered to the respondents at unloading chutes or near-by pens. After the representative of the commission firm has ascertained the pen in which the livestock has been placed, he goes to the representative of the stockyard company who is in charge of the particular division, and requests delivery. This representative of the commission firm is usually called a "train run-

ner." The livestock is counted out of the pen into the alley, and a train runner then goes ahead of it, leading the way to the pens assigned to his firm. In the case of [fol. 59] cattle and calves delivered at the unloading chutes, the stockyard company furnishes a man to go behind each load of livestock. During periods of heavy runs a train runner may lead a procession containing a number of carloads, each kept separate from the other by a stockyard employee. Such assistance is not furnished by the stockyard company in the case of driving hogs, nor in those instances where cattle are yarded temporarily in holding pens. When livestock reaches the pens of a commission firm, it is counted into the pens, usually by the head yardman for that firm. In the case of night arrivals during the season of heavy runs of cattle, some firms maintain a night train runner, either as an individual employee or one employed jointly with other firms.

58. Pens are assigned to the various commission firms in the different divisions of the yard. These assignments are made by a committee. The number of pens assigned to each firm is governed by the volume of business handled, and the location is governed largely by the length of time during which a firm has been in business.

59. Sheep arriving by truck are delivered at the sheep division. With respect to truck arrivals of hogs and cattle, it is necessary for the respondents to drive the livestock from the truck unloading chutes or near-by holding pens to their respective pens in the regular divisions. This work is accomplished either through individual employees or through those who make it their business to drive livestock at a stipulated head charge. The stockyard company makes available information in regard to truck arrivals of livestock through notification slips placed in boxes at the respective drive-in unloading chutes.

60. In taking cutsody of livestock consigned to them for sale respondents' employees make such records and memoranda as will enable them to preserve the identity of each consignment. Through experience gained in handling livestock, these employees can often identify animals once they have seen them. Frequently a consignment of livestock is owned by two or more people. Such livestock is usually marked in some distinctive way in order to main-

tain the identity of each owner's livestock. There are also frequent shipments of branded livestock, and these brands serve as a basis for identifying ownership.

61. Occasionally some of the livestock contained in a consignment is intended for a market agency other than the one to which it is billed. Such livestock is placed in a separate pen. The receiving agency then notifies the firm to which the livestock is to be delivered, and that firm removes the animals to its pens.

62. Traders who buy and sell in the yard for profit sometimes place their livestock with the respondent firms to be sold. This is called "planting" and such livestock is referred to as "seconds." In such cases the traders usually drive their livestock to the commission firms' pens.

63. Upon receipt of livestock in its pens an employee of the commission firm, usually the head yardman, orders feed from the stockyard company, which maintains the equipment for the delivery of the feed and employees who do the feeding. The employee of the commission firm [fol. 60] keeps the record of the amount of feed ordered. Sometimes the head yardman will sort and grade the livestock before feeding. As soon as it has been fed and graded, it is watered. Frequently when pens are available, a consignment of livestock will be divided into several bunches in order to enable the animals to drink with less confusion. Some of the work of preparing livestock for sale is done by the yardmen. When the salesmen arrive in the yard they may do further sorting and grading.

64. The regular market hours are from 8 a. m. to 3 p. m., but the stocker and feeder class of livestock may be bought or sold at any time. Salesmen usually go to their offices some time before the market opens and review available information, in order that they may judge the trend of the market. In many instances salesmen have seen the cattle in the country before they were shipped. Frequently the owners telephone or write to the salesmen about the shipment. Sometimes shippers will accompany their shipments and give the salesmen helpful information in regard to the livestock to be sold. Salesmen also check up on the condition of the previous day's market. They obtain similar information in regard to the other livestock

markets. They ascertain the estimated receipts of livestock at the Kansas City market and other markets for that day and opening prices for the day at other markets, in so far as such information is available.

65. The salesman then goes to the yard to look over the consignments and does whatever sorting is, in his opinion, necessary. When the market opens the buyers go to the pens where they, in company with the salesman, look at the livestock. According to the custom of the market only one buyer is taken into a pen at one time. If the livestock is suitable for the buyer, an offer and a bid are made. If a sale is not consummated, the buyer goes on to some other salesman, and the livestock is shown to the next buyer. On some days the buyers are very active and go out into the yard as soon as the market opens. On other days the buyers go out late in the forenoon and are slow to buy. There are many factors, the more important of which are the activity of the consuming demand and the supply of livestock, which determine whether a market is active or dull. It is bargaining among salesmen and buyers which finally determines what the market prices for the various grades and classes will be each day. The market may be strong at one time of the day and weak at another time. It is necessary that salesmen study the forces which affect the market from hour to hour, in order to determine in their own mind the best time at which to sell their livestock. Sometimes, although not frequently, a shipper will instruct a salesman not to sell livestock under a stipulated price. However, generally speaking, the shipper leaves this matter to the judgment of his salesman. In addition to the study of information in regard to supply and demand as factors affecting prices, a salesman must also be a judge of the factors which affect the value of livestock. In view of the fact that there is a wide margin between the prices paid for the highest quality of cattle and the lower grades of cattle, it becomes a very responsible task for a salesman to judge accurately the grades of cattle which he has to sell.

66. Once the market is made, sales are consummated rapidly, and the movement of livestock to the scales for weighing begins. The yardmen usually drive the livestock to the scales, although the salesmen in some instances as-

[fol. 61] sist in this work. As soon as sales are consummated the salesman gives his yardman information in regard to the names of the owner and the buyer, and how the livestock is to be weighed, if special sorting at the scales is required by the buyer. The yardman gives the weighmaster the information as to the owner and purchaser of the livestock when the livestock is driven on the scales. The weighmaster records this information on the scale ticket. When the livestock is driven off the scale, it becomes the property of the purchaser, and the employees of the stockyard company take possession of it and yard it for the buyer. Copies of scale tickets are taken by the yardman to the salesman, either in the yard or in the office, and the salesman marks the price thereon.

67. Respondents also assume certain responsibility in connection with the determination of the credit of the buyers of livestock. They know those who are members of the clearing house and do not hesitate to sell livestock to such members. If the prospective buyer is not a member of the clearing house, it is necessary to investigate his credit. A large percentage of the purchases are made by those whose credit is already known to respondents' salesmen.

68. The price of crippled and dead animals is determined upon a salvage basis. Standing arrangements are had with the Standard Rendering Company in connection with the price paid for dead animals, and similar arrangements with packers govern the determination of the prices paid for crippled animals. In this manner the crippled and dead livestock can be handled promptly and with the greatest convenience to all concerned.

69. In the cattle division there are many small lots of livestock to be weighed. There are frequent drafts consisting of only one or two head. This condition prevails especially in connection with the many grades and classes of butcher livestock. The larger commission firms maintain what is known as a "jack pot" man. He is one who possesses the peculiar ability to identify many different animals as to ownership and buyers. As a salesman consummates the sales of these individual head or small lots, he advises the "jack pot" man, who turns the animals into the alley. When he has accumulated a convenient

number of head, he drives them to the scale where he sorts them according to ownership and purchaser. Special scales are maintained for weighing "jack pots." This procedure makes it possible to economize in time and equipment in handling this character of business.

70. Those who are engaged in the business of buying livestock undertake to inform themselves in the same way as the salesmen do. Those who buy livestock on order will make a survey of the livestock in the yard to determine the supply of those classes and grades which are suitable to their orders. After they find a good supply of the kind of livestock which they know some of their customers use in their trade, they may telegraph or telephone to their customers, give an estimate of the price, and the prospect of obtaining supplies that will meet their particular requirements. Sometimes these customers place standing orders with their buying representative at the market. Frequently customers come to the market and accompany the buyers as they go about the yard looking for the kind and class of livestock desired. Some- [fol. 62] times order buyers will buy livestock when the price appears favorable and then obtain the orders later. One of the chief qualifications of a buyer is to be able to judge the killing qualities of slaughter livestock and the feeding and finishing qualities of stockers and feeders. In case the customer is a countryman or some one not known to the buyer, it is necessary to investigate his credit. Usually those who are not regularly engaged in business at the market do not pay cash or the equivalent of cash for their livestock. The order buyer must pay for the livestock promptly, and in many cases it will be several days before payment by the customer is realized.

71. If livestock is purchased to be shipped out, the buyer orders the necessary cars from the railroad company as soon as the purchase is made. Then he ascertains the number of head and the pen in which the livestock is held, and gives this information to the railroad. In case of stocker and feeder livestock which is bought to go back to the country, there are certain incidental services which may be necessary, such as branding, dipping, dehorning, and vaccination. Although these services are performed by the stockyard company, the yardman for the buyer

supervises such operation. When the livestock is ready for shipment, the loading out is done by the stockyard company's employees. It is customary for a yardman or someone representing the buyer to supervise this work.

72. The office work in connection with the buying and selling of livestock consists primarily in rendering accounts to shippers and purchasers and making remittances and collections, as the case may be. Forms known as account sales are used in rendering accounts in the case of livestock sold. One of these forms is prepared covering each consignment, showing the name of purchaser or purchasers, the number of drafts, the number of head, weight, and price of each draft, gross proceeds, items of expense such as freight, feed, yardage, commissions, and other deductible items, and the net proceeds. A copy of this is sent to the owner. In case of plural ownership consignments the accounting may be handled as in the case of single ownership consignments, in which event the prorating is done at the shipping point. However, it happens frequently that a commission firm is requested to do the prorating, which consists in figuring the gross proceeds of sale of each owner's livestock, the various expenses prorated to each owner, and the net proceeds of sale of each. Sometimes a request is made for individual account sales for each owner in a plural ownership consignment. In connection with the purchase of livestock an account purchase is prepared somewhat in the same manner as an account sale, giving the details as to the transaction, including the cost and any local expenses, such as commissions. Bills for the purchase of livestock which are presented are checked before the account purchase is made out.

73. The respondent market agencies which are engaged in selling livestock have followed the practice for a number of years of remitting the proceeds of sale of livestock through the bank. Usually the shipper will designate the bank to which he desires that the proceeds of sale be sent. Respondents have available to them information with respect to the various Kansas City banks which are correspondents of the local banks throughout the Kansas City trade territory. As soon as the net proceeds of sale have been computed, a commission firm will place an order with

[fol. 63] its bank to deposit the proceeds to the credit of the shipper at his bank. If requested, this transaction is handled by telegraph rather than by mail. A special effort is made by all market agencies to remit as promptly as possible, and the remittances are made as soon as the net proceeds of sale of each consignment can be ascertained, even though the collections from the buyers have not been made. Usually remittances of proceeds from the sale of truck-in livestock are made by firm check. In some cases such proceeds may be remitted through the bank or by cashier's check. Most of the collections are made through the clearing house. The packers, order buyers, and brokers who clear traders are members of the clearing house, and under the rules of that organization there are certain time limits within which they must remit through the clearing house for the livestock which they have purchased. Order buyers usually draw drafts upon their customers as soon as the livestock has been shipped, or they may take their customer's check. It seldom happens that a customer in placing an order will advance the cash.

74. Salesmen and members of respondent firms spend considerable time in the office interviewing shippers. This is done usually after the selling is completed. If shippers are not at the market, a salesman will write a letter to each one for whom he has sold livestock that day, giving information in regard to the transaction and such other general market information as he may deem helpful to his customer. However, this is not always done with respect to livestock received by truck.

75. There exists an arrangement between each of the respondents and the stockyard company whereby the latter, acting as agent of the carrier, will make formal delivery of livestock before freight charges on the consignment are paid. The stockyard company requires each respondent market agency to which livestock is shipped to furnish a bond covering the payment of freight, yardage, feed, and any other charges. These charges are deducted from the gross proceeds of sale of livestock before remittances are made to the shippers. The bills for these items are presented to respondents through the clearing house.

76. Each respondent furnishes a bond conditioned upon the faithful and prompt remittance of the proceeds of sale of livestock and the prompt execution of orders and the payment for livestock bought on order. Such a bond is required by the rules of the Kansas City Live Stock Exchange of its members, and such a bond is required of all market agencies under the provisions of the Packers and Stockyards Act and the regulations promulgated thereunder.

VIII. Personal Service Character of Respondents' Business

77. The livestock commission business is essentially of a personal service character. The amount of capital necessary to conduct it is relatively small. The use of certain material equipment, however, such as office furniture and fixtures, and equipment of more or less elaborate character, automobiles and horses, is essential in the rendition of the service. The automobiles are used for trips to the country both to solicit shipments and to appraise livestock. They also are used for travel to near-by feedyards whereat livestock may be under the control of [fol. 64] respective respondent firms while it is being fed and also whereat respondents sometimes consummate sales of livestock. In some instances the automobiles are owned by the respondent firm which uses them. In others they belong to a member or employee of the firm and their use is compensated for on some prearranged basis, such as actual expense or mileage. The horses are used in the cattle yards and are ridden by the cattle salesmen in the course of their handling and selling of cattle. In some instances they also are ridden by patrons who either have cattle consigned to respondents for sale or else are seeking to purchase cattle from respondents. In some instances these horses are owned by the respective respondent firms who use them. In others they are the property of the individual salesmen who may be owners or employees of a respondent firm. In still other instances they belong to the stockyard company and are rented, as occasion requires, at an agreed rental usually on a time basis.

78. In addition to the more or less permanently invested capital enumerated above, a certain amount of cash work-

ing capital is required. The business is essentially a cash one. That is to say, it comprises the receipt and remittance of the proceeds of sale of property owned by its patrons. Nevertheless, only those sales of livestock which are billed to the purchaser prior to 2 o'clock p. m. on the day of sale are paid for on that day. Respondents follow the practice of remitting the proceeds on the day of sale. Such remittances are made by deposits in banks at Kansas City for transmission to the banks of respondents' patrons. This form of remittance is desirable because it eliminates the so-called "float." It requires, however, that each respondent firm have on hand or available through bank credits, a sufficient amount of working capital daily to cover the difference between the total proceeds of sales made each day and the total collections realized on that day. A greater need for cash working capital arises from respondents' activities in the purchases of livestock for their customers. The custom of the market place is such that this livestock must be paid for not later than 10 o'clock a. m. of the day following its purchase. The patron, who usually is a feeder, rarely comes to the market in position to make cash payment. This is partly at least because he does not know in advance exactly what the monetary requirements are to be and because in many instances he cannot arrange credit with his local bank until after the arrival of the livestock at his railroad station or farm. It appears impracticable to avoid extension of credit to these patrons. The livestock so purchased is paid for by the respondent firm and a draft is drawn on the patron through regular banking channels. Such drafts ordinarily are paid within from two days to two weeks, but infrequently may require more time.

79. The revenue of respondents' business consists of commissions charged by them for the sale and purchase of livestock. By far the greater portion of it comes from sales. The revenue from sales is deducted from the gross proceeds of such sales and therefore is received daily. This practically does away with any necessity for accounts receivable except in those infrequent instances in which a respondent firm advances money to a patron in contemplation of the sale of livestock, either already received at or on its way to the market. In the buying of livestock the receipt of commissions customarily is delayed from two days

to two weeks. Some of respondents' cash requiring ex- [fol. 65] penses are paid in advance, necessitating a small amount of working capital for that purpose. There is a further need for working capital to tide over those seasons when the low run of livestock may not produce enough income to maintain the overhead expenses of the business. It is not altogether practicable for a commission firm to expand and contract its organization to meet the fluctuation in receipts of livestock. Additional yard help may be hired during the heavy seasons but there are certain employees, such as salesmen, who must by the nature of the business be retained throughout the year.

80. The stockyard company requires of those engaging in business on the market a bond covering, among other things, the payment of the freight, feed and yardage charges. In addition to the formal requirements of registration and the filing of a tariff, the Packers and Stockyards Act, 1921, as amended, requires each market agency to give a bond covering the faithful and prompt remittance of proceeds of sale of livestock, and the prompt and faithful execution of orders for the purchase thereof and the payment for such purchases. The maintenance of these bonds necessitates a small amount of capital.

81. By far the greater part of the service rendered by respondents to their patrons comes not from the employment of property or money but the application by respondents and their more responsible employees of personal skill, judgment and integrity. Such skill and, to a considerable extent, judgment result from the training and experience acquired by respondents and their more responsible employees in the course of that development whereby one who enters the business in youth as a yardboy or minor office employee grows into a salesman, proprietor, or supervising office employee. While general scholastic training is not unusual among respondents, the character of the business is such that one may become better fitted for the higher positions by entering the low positions requiring little, if any, previous experience, and learning the business while working up to the better places. The personnel of the business may be divided into those whose major work is performed among the livestock in the pens and alleys and those whose time principally is spent in the offices. The first of

these usually enter the business as young men with a background of livestock experience on farms. Nearly always they begin as yardmen for the commission men, however, in some instances as yardmen or other employees of the stockyard company. As yardmen they work side by side with and as assistants of the salesmen. Through this association they acquire the skill requisite to beginning as salesmen. While still yardmen they are permitted, from time to time, to sell livestock under the supervision of the salesmen, and later to sell small consignments of less important grades and classes on their own responsibility. This leads them to the position of salesmen when a vacancy occurs in the sales force. The salesmen come in personal contact with the patrons and acquire a personal following which may become sufficiently large to enable them to acquire a membership in the firm by which they are employed, or to establish a new firm of their own.

82. The method of advancement to the higher office positions is not dissimilar from that which has been described with respect to the employees who work in the yard. In [fol. 66] neither instance, however, have the more responsible employees and proprietors always worked up in the particular firm with which they are presently associated. In some instances, of course, the requisite experience has been gained while associated with other commission firms at Kansas City or at other livestock markets or while employed by a stockyard company or engaged in some activity related to the marketing of livestock at public stockyards. However, the rule is that the personnel holding the more responsible positions have gained their knowledge as an incident of employment in lesser positions at salaries compensatory of the services performed in those positions.

IX. Rates Charged by Respondents for Services Rendered

83. Respondents who were members of the Kansas City Live Stock Exchange filed to become effective on January 1, 1926, their tariff No. 2, setting forth all rates and charges for selling and purchasing livestock on the Kansas City market. Each of such respondents filed its separate supplement No. 3 to Tariff No. 2, effective January 1, 1930. This supplement contained rates and charges assessed by each respondent filing said supplement to cover the charges made for insurance on livestock in the yards. With this

supplement there was filed Tariff No. 2 as modified by Supplement No. 2 thereto. Certain of the respondents, pursuant to provisions of Tariff No. 2, as amended by Supplement No. 2, filed their individual tariffs covering their rates and charges for purchasing livestock. On May 11, 1932, and prior to the issuance of the Acting Secretary's order of May 18, 1932, all respondent commission firms (i.e., those who sell livestock on a commission basis), and all the respondent order buyers except three filed severally a uniform tariff of rates and charges for selling and buying livestock to become effective on May 23, 1932. The two respondent cooperative commission firms filed schedules, effective on June 18, 1932, in conformity with the order of May 18, 1932. These two cooperative agencies later filed schedules, effective on October 10, 1932, modofying somewhat their commission charges.

84. A summary of the tariffs of respondents, other than the cooperative market agencies, now in effect at the Kansas City market follows:

Selling Charges

Cattle and Calves Arriving by Rail:

Calves
- 1 to 20 head, average weight 400 lbs. or under ..... 30¢ per head
- All over 20 head, average weight 400 lbs. or under ..... 25¢ per head

Yearlings and Cattle
- 1 to 20 head, average weight 400 to 800 lbs. ..... 60¢ per head
- All over 20 head, average weight 400 to 800 lbs. ..... 40¢ per head

Cattle
- 1 to 20 head, average weight 800 lbs. and over ..... 70¢ per head
- All over 20 head, average weight 800 lbs. and over ..... 60¢ per head

[fol. 67] Cattle and Calves Arriving by Truck:

Calves
- 2 to 20 head, averaging 400 lbs. or under 30¢ per head
- All over 20 head, averaging 400 lbs. or under ..... 25¢ per head

Yearlings and Cattle
2 to 20 head, averaging 400 to 800 lbs.... 65¢ per head
All over 20 head, averaging 400 to 800 lbs. 45¢ per head
Cattle
2 to 20 head, averaging over 800 lbs..... 70¢ per head
All over 20 head, averaging over 800 lbs. 60¢ per head

Minimum Charge for One Head:

Calves—40¢.
Cattle—80¢.
Hogs
1 to 40 head, averaging over 130 lbs..... 25¢ per head
All over 40 head, averaging over 130 lbs.. 10¢ per head
1 to 50 head, averaging less than 130 lbs.. 20¢ per head
All over 50 head, averaging less than 130 lbs. ..... 5¢ per head

Minimum Charge for One Head: 35¢

Sheep or Goats Arriving by Rail
For the first 120 head in each car..... 10¢ per head
Additional head over 120 to 160 head.. 5¢ per head
Each additional head over 160 head..... 4¢ per head
Sheep and Goats Arriving by Truck
For each 300 head or part thereof,
1 to 10 head, 25¢ per head
11 to 40 head, 20¢ per head
41 to 60 head, 15¢ per head
61 to 300 head, 4¢ per head
Minimum Charge for One Head—35¢

Buying Charges

Cattle and Calves Shipped out by Rail
Cattle and Calves, 50¢ per head; minimum $12 a car; maximum $15.
Calves, 30¢ per head, with a maximum of $15 per car.
Cattle Trucked Out
50¢ per head; maximum $15 for 22,000 lbs.
[fol. 68] Cattle Shipped out for Slaughter, $15 a car.
Cattle trucked out for Slaughter, 50¢ a head, maximum $15 for 22,000 lbs.

Buying Charges—Continued

Hogs

Feeders and Stock Pigs

Up to 50 head, 20¢ per head

51 head and above, 5¢ per head

Slaughter Hogs

Up to 50 head, 20¢ per head

51 head and above, 5¢ per head

Sheep or Goats Shipped out by Rail

$12 single deck; $16 double deck.

Sheep or Goats Driven or Hauled out

Up to 125 head, 20¢ per head; maximum $12

Above 125 head, 15¢ per head additional; maximum $16 up to 250 head.

A summary of the tariffs of the respondent cooperative market agencies now in effect at the Kansas City market follows:

Selling Commissions

		Minimum		Maximum	
Straight Cars	Head	S. D.	D. D.	S. D.	D. D.
Cattle	$.60	$13.00		$15.50	
Calves	.30	13.00		15.50	$18.50
Hogs	.20 up to 40 head				
	.10 each additional head over 40			12.00	16.00
Sheep	.15	10.00		12.00	17.00

Mixed Cars:

Cattle—65¢ per head. Not to exceed $15.50 for the cattle in a car.

Calves—32¢ per head. Not to exceed $15.50 for the calves in a single deck or $18.50 for the calves in a double deck car.

Hogs—25¢ per head up to 40 head. 10¢ per each additional head over 40, not to exceed $12 for the hogs in a single deck car, or $16 for the hogs in a double deck car.

Sheep—15¢ per head. Not to exceed $12 for the sheep in a single deck or $17 for the sheep in a double deck.

[fol. 69] Drive-Ins:

Cattle—65¢ per head with a maximum of $16.50 up to and including each 27 head.

Calves—On each 75 head of calves or fraction thereof

in one consignment belonging to one owner the rates shall be determined as follows: 30¢ per head with a maximum charge of $16.50 up to and including 55 head; 25¢ per additional head above 55 with a maximum charge of $17.50 up to and including 75 head.

Hogs—25¢ per head up to 40 head, inclusive; 10¢ per each additional head with a maximum charge of $14 on any one consignment.

Sheep—On each 250 head of sheep or fraction thereof in one consignment belonging to one owner the rate shall be determined as follows: 20¢ per head with a maximum of $13.00 up to and including 125 head. 15¢ per additional head above 125 with a maximum charge of $18.00 up to and including each 250 head.

Buying Commissions

Cattle or Calves:

Non-Slaughter

(a) Shipped out—50¢ per head with a minimum of $12 and a maximum of $15 per car.

(b) Trucked or driven out—60¢ per head with a maximum of $16 and 22,000 pounds shall be considered as the maximum weight to be purchased at this maximum rate.

Slaughter

(c) Shipped out—maximum $15 per car.

(d) Trucked or driven out—60¢ per head.

Hogs:

(e) Slaughter—$7.50 for single deck car; $12 for double deck car.

(f) Stock—$12 for single deck car; $20 for double deck car.

Driven or Hauled out

25¢ per head up to 48 head

On larger lots carload rates; 120 head to be considered a single deck load.

[fol. 70] Sheep or Lambs:

(g) Sheep or lambs $12 per single deck and $16 per double deck car.

(h) Sheep or lambs driven or hauled out, 20¢ per head or a maximum of $12 up to and including 125 head. 15¢

per additional head above 125 with a maximum charge of $16 up to and including 250 head.

The foregoing are the basic rates but do not include all charges made. There are, in addition, provisions in respondents' tariffs for certain extra service charges, minimum charges on consignments, and special charges for selling the livestock of dealers. Besides these there are other miscellaneous provisions with respect to the application of the rates.

X. Volume of Business Handled by the Respondents

85. The revenue producing business of the respondents consists of livestock sold and livestock purchased on a commission basis in the Kansas City stockyard and to a comparatively slight degree at points away from Kansas City. The volume discussed under this heading relates to that portion of the business of the respondents transacted at the Kansas City market. Most of the respondents who sell livestock also purchase it on order and charge a commission therefor. Such purchasing is the principal business of certain respondents known as order buyers.

86. While in this order the unit principally used for rate making purposes is the head of each respective species of livestock, simplicity and clarity in the statement of relative revenue producing volumes of the respective respondents require the use of some common denominator. This is for the reason that the commissions for the sale or purchase of a single head of cattle necessarily exceed to a considerable degree such commissions with respect to a hog or a sheep. The fact that a carload of hogs or sheep contains many more animals than a carload of cattle brings the commission revenue produced from it much more nearly on a level with that produced from a carload of cattle. Therefore, in this discussion of the revenue producing volume, the livestock of each species handled by each respective respondent commission firm is reduced to carload equivalents based upon the average number of animals per car of the particular species contained in the total number of straight cars of that species received by the particular respondent during the years 1929 and 1931. The following table sets forth the number of cars of livestock of all species received by each of the respondents:

[fol. 71] Volume Handled by Commission Men in 1929

Firm No.	No. of Cars	Firm No.	No. of Cars
33	114	62	1306
41	131	48	1367
37	162	7	1382
72	165	70	1400
66	178	55	1441
80	277	52	1463
86	365	53	1583
85	424	65	1625
78	449	26	1736
79	449	56	1775
11	456	68	1838
43	492	34	1894
74	499	28	1930
31	512	14	2124
67	555	25	2147
1	596	42	2288
61	611	18	2381
76	612	12	2958
6	642	83	2980
17	656	71	3117
20	805	13	3343
15	829	84	3541
8	854	51	3786
23	871	73	4051
5	879	35	4394
30	950	10	4913
60	1000	36	4995
77	1022	82	5415
44	1039	46	7553
16	1204	54	8158
75	1208	63	8577
29	1285	59	8778
4	1302		

Of these 65 firms listed above, 11 firms handled over 50 per cent and 25 firms handled over 75 per cent of business received by all.

Volume Handled by Order Buyers in 1929

Firm No.	No. of Cars	Firm No.	No. of Cars
49	11	3	480
47	34	38	947
24	75	21	1124
58	79	32	1369
40	102	81	1978
69	203	64	2771
39	446	57	3309

[fol. 72] Volume Handled by Commission Men in 1931

Firm No.	No. of Cars	Firm No.	No. of Cars
37	67	23	1239
33	72	4	1244
72	88	44	1261
67	91	56	1263
88	99	62	1269
11	106	53	1297
66	112	65	1372
1	257	70	1382
74	314	48	1421
9	364	14	1641
79	381	34	1984
78	421	25	1999
76	424	42	2022
61	425	18	2092
87	432	55	2219
17	446	71	2234
19	447	35	2418
6	605	12	2450
15	702	13	2475
43	785	73	2936
30	814	51	2976
52	820	84	3021
5	857	82	3741
75	872	83	4130
60	905	36	4996
77	906	46	5641
29	962	10	5699
16	988	63	6009
20	1039	59	7022
7	1067	54	8544
26	1164		

Of the 61 firms listed above, 11 firms handled over 50 per cent and 23 firms handled over 75 per cent of the business received by all.

Volume Handled by Order Buyers in 1931

Firm No.	No. of Cars
101	3417
102	2103
103	892
104	289
105	99
106	618
107	570

[fol. 73] XI. Gross Revenues

87. The respondent commission firms vary among themselves in the amount of gross revenues received from the sale of livestock consigned to them. These differences are due, for the most part, to variation in the volume of livestock received by them. Some of them, however, are attributable to a lack of uniformity in the character of business received. The livestock consigned to some firms may run heavily to one species and grade and that of another to another species and grade.

88. The following tables show for each firm the gross selling and buying commissions received from Tariff No. 2 in 1929 and in 1931:

Commission Men

1929		1931	
Firm No.	Amount	Firm No.	Amount
33	$1,943.52	37	$1,199.90
41	2,228.05	33	1,522.95
72	3,021.40	72	1,695.05
37	3,115.05	88	1,832.75
66	3,326.40	11	1,845.15
80	4,658.92	66	1,983.00
86	6,386.20	67	2,167.55
85	7,023.30	1	3,600.28
11	7,224.28	9	5,687.96
79	8,294.75	74	5,923.11

Commission Men—Continued

1929		1931	
Firm No.	Amount	Firm No.	Amount
78	8,368.25	79	7,446.58
74	8,523.07	78	7,563.75
67	9,547.92	61	7,718.13
31	9,697.15	76	8,097.73
61	10,187.30	19	8,135.30
1	10,317.35	17	8,421.15
76	10,908.58	87	8,883.96
43	11,246.92	6	11,688.49
6	11,564.97	52	14,781.04
17	12,195.40	15	14,911.27
23	14,993.86	30	15,428.75
20	15,271.95	77	15,927.86
8	15,603.20	75	16,274.93
15	17,02[illegible]	60	17,078.82
5	17,3[illegible]	43	17,419.88
77	17,65[illegible].03	5	17,556.01
30	17,971.15	29	18,286.82
60	19,297.77	16	18,837.50
75	20,710.71	20	19,581.50
16	22,421.33	7	20,078.27
62	23,139.60	23	20,792.66
4	23,171.64	26	21,807.77
29	23,804.71	4	22,336.53
44	25,014.27	56	23,193.08
48	25,910.35	62	23,488.44

[fol. 74]

52	26,038.80	53	23,881.88
7	26,481.24	65	25,643.59
55	26,770.90	70	26,391.90
70	27,154.97	48	27,216.03
53	28,775.67	44	27,679.43
56	30,627.34	34	29,041.10
65	31,275.50	14	32,208.87
26	31,517.40	25	36,280.93
68	31,603.26	18	37,283.65
34	31,992.53	42	39,296.66
28	34,325.90	55	40,949.18
14	37,534.95	71	41,474.09
25	38,382.32	35	45,007.41

Commission Men—Continued

1929		1931	
Firm No.	Amount	Firm No.	Amount
18	42,551.14	12	45,066.81
42	43,228.85	13	47,563.60
83	50,133.21	73	51,233.80
12	52,653.11	84	52,999.55
71	53,301.19	51	54,703.22
13	61,483.65	82	67,812.70
84	61,984.59	83	68,677.60
51	65,065.77	46	91,216.54
73	72,448.32	36	99,769.35
35	78,374.95	10	102,078.98
10	90,759.27	63	104,993.75
82	94,938.17	59	126,036.08
36	118,172.84	54	154,137.19
46	124,217.91		
63	148,516.86		
54	148,669.21		
59	155,381.93		
	$2,313,442.99		$1,911,837.81

Of the 65 firms listed for 1929, 11 firms received over 50 per cent of the 1929 revenues; 26 firms received over 75 per cent of these revenues. Of the 61 firms listed for the year 1931, 11 firms received over 50 per cent of the revenues for that year; 24 firms received over 75 per cent of the revenues of that year.

XII. Methods Used by Respondents in Getting and Maintaining Business

89. The respondents employ many different methods in their attempts to get and maintain volume of business. They vary somewhat in their opinions as to the relative value of the different business getting and maintaining activities. They are practically unanimous, however, in the view that the most important factor is the rendering of the highest class of service. It is their opinion that a satisfied customer is a firm's best advertisement. Most of the respondent firms send out market letters periodically. These vary in frequency, size and content. They usually contain

information about general market conditions and prospects for the future, and give an account of some outstanding sale made by the issuing firm. Frequently matters of general interest to livestock producers are incorporated in these market letters. In addition to these, some of the [fol. 75] firms get out circulars or cards giving suggestions about sorting and grading and methods of feeding and loading livestock. Those respondents who are members of the Live Stock Exchange are prohibited by its rules from giving presents or gifts in consideration of past or future business. This rule does not preclude the giving of articles, such as lead pencils, memorandum books, and other inexpensive advertising novelties.

90. Some of the respondents advertise in livestock journals and in the local papers in the territory from which they are accustomed to receive livestock. A local livestock market paper is published at the Kansas City market. Prior to January 1, 1930, it was the custom of many of the respondents to give free subscriptions to this paper to some of their customers. On January 1, 1930, the respondents who were members of the Exchange discontinued this custom under a rule of the Exchange which became effective on a sliding scale basis within a period of six months. In lieu of this practice, the Exchange began a radio broadcast service for the maintenance of which each member is charged 5¢ per car on the livestock handled. This radio broadcast is in the nature of a joint advertising venture on behalf of Exchange members.

91. Livestock salesmen carry on a considerable volume of correspondence with their customers and thus maintain contacts regarded as so necessary in the commission business. Most of the firms keep a list of customers and prospective customers. In addition to answering inquiries made by customers for market information, some of the firms at such times as they may deem suitable send letters dealing with market conditions which they consider of interest to their customers.

92. Respondents frequently entertain their customers, but a rule of the Exchange prohibits the giving of free meals in the West Bottoms, which is that part of the central industrial district of Kansas City in which the stockyard is located. Outside of this restriction, the amount

expended for entertainment is limited only by what each firm may deem expedient in its own case. Throughout the course of the year there are meetings and conventions of producers held in the trade territory of the Kansas City market. It has become customary for many of the respondents to send representatives to these meetings. Attendance thereon affords an opportunity to meet and talk with the producers of livestock. In addition, respondents make special trips to the country for the purpose of soliciting business. Those respondents who are members of the Exchange are prohibited by its rules from employing traveling or livestock solicitors. Only individual bona fide stockholders of corporations and salesmen or buyers of livestock on the Kansas City market, regularly employed in the commission business at Kansas City, may solicit business for the market. Such persons cannot remain in the country on a soliciting trip more than 15 days in each month, subject, however, to certain exceptions in certain stated regions.

93. In an effort to get business many of the respondents have undertaken the rendition of definite services incident to the marketing of livestock, but not immediately associated with the service of buying and selling livestock on a commission basis at the Kansas City market. One of these activities is commonly referred to as "appraisal" or "inspection" work. Some of the shippers, those usually having more than a carload of livestock to be marketed, request members of respondent firms, or their salesmen, to come to [fol. 76] the country and look at their livestock. The object of the shipper in requesting this service is to get the opinion of the salesman as to whether the livestock is in condition to be marketed to best advantage and about what price it may be expected to bring. Frequently on such visits the salesman assists the producer in sorting his livestock and in loading it for shipment. A single shipper sometimes requests this service of more than one commission firm in order to get the benefit of the opinions of more than one salesman. These appraisal or inspection trips are made either by train or by automobile. In near-by territory it is usually done by automobile. These trips are made at the expense of the respondent firms. Inasmuch as this is a free service and respondent firms encourage shippers to avail themselves of it, it is increasing.

94. Several sheep and cattle feeding yards are located near Kansas City to which some shippers send their cattle and sheep to be held and fed anticipatory to marketing it either at such feed yards or at the Kansas City stockyard or some other livestock market. It is customary for the owners of such livestock to ask the commission firms to look after it. The owners often accompany it. Respondents make trips, sometimes with the owners, to these feeding yards to look over the livestock and render sundry services in connection with it, such as sorting, supervising and feeding it and arranging for shearing of sheep and the selling of the wool, if shearing is deemed necessary. No separate charge is made for these services. At the time of the second hearing in this case cattle and sheep were being bought and sold at some of these neighboring feeding yards.

95. The leasing of pasture land for the use of those customers who have cattle to graze has become an important activity for some of the respondent firms. The Kansas City market is near the Flint Hill section of Kansas and the Osage country of Oklahoma, which are extensive grazing areas. Many stockmen throughout the Southwest request their commission firms at the Kansas City market to obtain pasture for them in these grazing regions. The respondent firms that render this service make it a point to keep informed in regard to the available pastures, in order that ready contact may be made with the owners of these grazing lands. A commission firm rendering this service goes out to inspect the pastures in order to determine the condition of the grass, the water supply and the character of the fences, and then reports to the customer. The commission firm also furnishes a form of pasturage contract, which is used when the owner leases the land. After the lease has been made and the owner has shipped this livestock to the pastures, a representative of the commission firm is usually present when the cattle arrive in order to look after the interests of the owner. While the cattle are grazing frequent trips are made by the interested commission firm for the purpose of inspecting the cattle, the condition of the grass, and the supply of water. Another inspection of the cattle generally is made before shipment to market. No separate charge is made for this service which is rendered in the hope that the commission firm rendering it will receive the livestock for sale on the Kansas City

market. It sometimes happens that this livestock is shipped elsewhere or, if to the Kansas City market, to some other firm than the one which has rendered the service.

96. Some of the respondent firms engage in making loans on livestock. Such firms either loan their own money or [fol. 77] negotiate loans through a bank. They may act as the endorser of livestock paper. In those cases in which they endorse the paper, the interest charged is about one per cent above that which prevails in the market. This represents a charge by the commission firm for its services and for underwriting the risk involved. In connection with making loans on livestock it is usually necessary to make an inspection of it. Most of the loans are made at the time the livestock is purchased at the market. In this event the work of inspection does not involve a great deal of time or expense since the details are handled by the regular office force. The respondents do not contend that the livestock loan business is a part of the commission business, but they do contend that it is a business-getting venture and that the expense incurred in connection with it is one properly incurred in the conduct of the commission business.

97. The business-getting efforts of those who buy livestock on order are not so varied. They advertise in papers to some extent and make occasional trips to call upon their customers. Contact by telephone and telegraph is the principal means used by them in getting and maintaining their volume of business.

XIII. Joint Activities of the Respondents

98. With the exception of the two cooperative commission firms and several individual order buyers operating on a small scale, respondent firms maintain the Kansas City Livestock Exchange, which is a voluntary organization not conducted for profit. The object of this association is to maintain uniform customs and certain standards of trade ethics, more particularly outlined in the rules formulated by it. All members of the Exchange are required to observe these uniform rules. The membership of the Exchange is composed of those who engage in the commission business at the market and such others as were once engaged in such business and who have become inactive but have retained their memberships.

99. There exists also an arrangement between the members of the Exchange and the respondent cooperative firms known as a trade practice agreement, whereby the latter two firms, by meeting certain conditions, such as the giving of bonds and agreeing to abide by certain disciplinary measures, can avail themselves of certain facilities maintained by the Exchange. The Exchange is registered as a market agency engaged in rendering certain miscellaneous services, including particularly hog inspection and dockage. It is not a respondent in this proceeding and the reasonableness of its rates for services is not a subject of inquiry here.

100. The Exchange maintains a system of hog inspection and dockage whereby it employs men to inspect these animals for conditions of health and for certain physical conditions which may exist in some hogs, for which a deduction from the agreed price will be made. The rules of the Exchange definitely prescribe the procedure. If there is dissatisfaction with the docker's decision, an appeal may be taken to the chief inspector whose decision is final unless an arbitration is called for. The person who calls the arbitration is charged $1.50. A charge of 20¢ is made on each car of hogs arriving at the market for sale, and a prorata charge is made on truck receipts of hogs to cover the expenses of hog inspection and dockage. This charge is deducted from the proceeds of sale of hogs.

[fol. 78] 101. The Exchange maintains a clearing house which serves as a central office for the convenient handling of bills rendered and accounts collected. Each firm pays for the use of this facility according to the volume of business handled. The cooperative firms also avail themselves of this service.

102. The Exchange procures and maintains a policy of insurance, protecting livestock against fire while it is in the yard. One-half the premium is deducted from the proceeds of sale of livestock. Traders, packers, and order buyers also make a contribution to a fund used to maintain this insurance. Those agencies which are not members of the Exchange maintain their individual insurance policies and do not enjoy the protection of the blanket policy carried by the Exchange for its members. The collections by

the Exchange exceed the premiums, and this excess goes into the general fund.

103. The Exchange has an agricultural development fund. Members are assessed 10¢ per car on inbound shipments, 6¢ per car on livestock bought on order, and 6¢ per car on livestock cleared through brokers. This fund is used in general promotional work, such as livestock sanitation, boys' and girls' club work and fairs.

104. On March 1, 1930, the Exchange began making an assessment of 5¢ on each inbound car of livestock sold, to support the radio broadcasting conducted by it. This charge is made against those firms which are members of the Exchange. The Exchange also assesses each firm 2¢ per car on all inbound rail receipts to maintain its transportation department. The purpose of this department is to look after train service and the relationship of freight rates as between Kansas City and other markets. The respondent cooperative firms are assessed for this purpose, pursuant to the trade practice agreement.

105. The Exchange charges $3 per month per membership for the purpose of building up a fund to retire the certificates of membership of deceased members. This is governed by the rules of the Exchange. The Exchange has organized an independent association, composed of members of the Exchange, known as the Kansas City Live Stock Exchange Employees Association. It has the same officers as the Exchange and is founded and operated under the insurance laws of New York. Contributions to this are made on an individual basis, and the expenses of the association are borne by assessments against individual members.

XIV. Risks Incurred in the Commission Business

106. The record in this proceeding shows the character of the risks to which the respondents are subject in the conduct of their business. These risks are of two general types, namely, those which result in losses of sufficient frequency and definiteness to make it possible for insurance companies to calculate on an actuarial basis the premiums necessary to be charged and those which occur so infrequently and are so indefinite in character as to make this impossible. The former class of risks is insurable, while

the latter is not. Insurance premiums paid enter into the expenses of the respondents. The losses incurred on account of uninsurable risks constitute items to be provided for in the reasonable profit allowable over and above reasonable expenses. The respondents claim that these risks [fol. 79] affect both their revenues and their expenses. Among those which affect their revenues are the possibility of decline in the production of livestock within the trade territory of Kansas City and the growth of direct buying by packers in that area. Among those risks affecting unfavorably the expenses of conducting their business the respondents enumerated the following: their guaranty against defects in title to livestock sold by them; errors entering into accounting processes; failure of producers to make payment; losses through litigation on account of bank failures; freight undercharges; sales of diseased and defective livestock; loss or damage to livestock while in their custody; public liability; liability to employees; and loss of property through fire. Against insurable hazards most of the respondents carry some insurance but there are others who choose to carry this risk themselves.

107. The respondents are forced by the conditions which surround the conduct of their businesses to carry some of the risks themselves. While the livestock commission business is theoretically a cash business, it frequently happens that respondents make remittances before they have received payment for livestock sold. If the buyer is a regularly registered agency at the market, other than a packer buyer, the payment for the livestock is guaranteed under the buyer's bond. If, however, the buyer is not bonded, there is an element of risk in a sale to such a person in that the purchaser for some reason may not settle for the livestock purchased. It sometimes happens in connection with sales of livestock to a countryman who gives his check or in case of a sale to those who purchase on order that the commission man turns over to the owner the proceeds of sale before collection is made from the purchaser. Besides this, there is also an element of risk involved in the remittance of proceeds to the shipper in that litigation may arise in connection with the failure of a bank in which proceeds have been deposited. Other risks which may be classed as uninsurable are those arising from bad debts, errors, and adjustments which cannot be avoided even by

reasonable precaution, losses on account of making loans, and other items of like character. Bad debts are usually incurred in connection with loans made or credit given to those for whom purchases are made, or the honoring of drafts drawn by shippers before livestock has been sold, the proceeds of the sale of which do not equal the amount of the draft. There is also the possibility of injury to livestock while in the custody of the commission firms resulting from the negligence of the commission firm or its employees. Inasmuch, however, as each commission firm endeavors to render the highest class of service and handle livestock in the most humane manner, the risk of loss from this source is practically negligible.

XV. Economic Changes Since the Year 1929

108. The re-hearing was granted in this proceeding upon the ground alleged by the majority of the respondents in their petitions therefor, namely, that changed economic conditions since the original test year, 1929, had rendered the experiences of that year insufficient as a basis for the determination of reasonable rates. It becomes pertinent, therefore, to note herein the changes shown of record and noticeable under the doctrine of Atchison, Topeka, and Santa Fe Railway Company v. U. S., 284 U. S. 248, which have occurred between the year 1929 and the close of the record in the last *yearing* in this proceeding. They may be discussed, as three general classes, namely (1) general [fol. 80] changes affecting the country as a whole; (2) general changes affecting the livestock industry; and (3) particular changes affecting respondents' businesses and revenues.

109. The general economic changes are, in brief, that beginning in the year 1929 the business life of the country has descended from one of the highest levels of activity and prosperity ever known to one of the most severe depressions in our entire national experience. Values of tangible property and of investments, as well as incomes, salaries, wages, and commodity prices have descended to levels lower than were thought in 1929 hardly to be possible.

110. The effect of the general depression was felt severely in the livestock producing industry. Whereas in De-

cember, 1929, the monthly average prices at Kansas City of slaughter steers ranged from $9 to $14 per 100 lbs.; of hogs from $7 to $9; and of slaughter lambs from $9 to $12; depending upon weight and grade, the comparable prices for December, 1931, were: slaughter steers, $3 to $10; hogs, $3 to $4; and slaughter lambs, $3 to $5. It was testified by some of the respondents that at times since the year 1929 the livestock market at Kansas City was so demoralized by lack of demand and consequent low prices that they advised their patrons to withhold shipments of livestock even though so doing tended to decrease the respondent's own revenues.

111. In its effect on the prosperity of the respondents' businesses the general depression manifested itself principally in a decline in the volumes of livestock received by them for sale or bought by them on commission. As illustrative of this, their total revenue producing fresh receipts of livestock were for 1929: cattle, 1,743,165; calves 273,577; hogs 2,140,170; and sheep 1,673,705 heads; while for 1931 they were: cattle 1,580,290; calves 236,727; hogs 1,102,425; and sheep 1,817,611 head. There were, of course, corresponding declines in revenues, except in the case of sheep where the increased volume produced a greater revenue. The record having been closed in November, 1932, receipts for the entire period of that year are not available. However, those for the first seven months thereof were not quite as great as during the similar period of 1931.

112. In the year 1932, partly, at least, as a result of the general depression and the unfavorable economic condition of their patrons' businesses, respondents reduced their rates to some extent.

113. Notwithstanding the unfavorable business conditions and lowered receipts in 1931, as compared with 1929, few of respondent firms operating in both of those years showed any substantial reduction of personnel in the former as compared with the latter. Also, few firms made any substantial reduction in salaries and wages sufficiently early in the year 1931 materially to affect their cost of doing business as shown in the audits covering that year. Such decreases as were made took place largely in the latter part of the year 1931 and in the year 1932. The general impression gained from the record is, however, that

respondents, in the face of almost universal lower levels in the United States, are attempting to maintain their personnel and the salaries thereof at the levels obtaining in the more prosperous year, 1929. This necessarily has a depressing effect upon the net moneys available to the owners of these businesses which may be designated "net owner incomes."

[fol. 81] XVI. Principles Governing Determination of Reasonable Commission Rates

114. The Packers and Stockyards Acts provides that if, after investigation, the Secretary of Agriculture finds commission rates in effect at a livestock market to be unjust, unreasonable, or discriminatory, he shall prescribe rates that are just, reasonable and non-discriminatory, or the maximum or minimum rates, or the maximum and minimum rates, which are just, reasonable and non-discriminatory. In arriving at such a schedule it is necessary to adopt a guide to reasonableness. The guide adopted in this case is that under ordinary conditions as they prevail on the Kansas City market, a schedule of rates should be high enough to produce sufficient gross revenues to pay all reasonable costs and a reasonable compensation for management and risk, that is, a reasonable profit, to the owner or owners of any firm which receives enough livestock to enable it — handle its business in a reasonably efficient and economic manner. This principle was followed in the Omaha Commission Rate Case, and was approved by the Supreme Court of the United States in the case of Tagg Bros. and Moorhead, et al., vs. United States (280 U. S. 420). It becomes necessary, therefore, in following this guide to determine the reasonable costs to the respondents of handling each species of livestock.

XVII. Cost Occasioning Factors

115. There is a relationship between those factors which occasion work for respondents and their employees and the costs to respondents of rendering the services for which they charge the rates. This relationship, however, is not so direct as to bring about an increase in cost whenever an increase in work arises. This is due to the fact that in many instances the major functions of those engaged in perform-

ing the activities of respondents can be carried on only at certain times. For instance, a salesman cannot sell livestock except when the market is open and more or less active, notwithstanding the volume of livestock which he has for sale. On the other hand, the type of men who make good salesmen would hardly be content to accept less salaries in consideration of short hours. They demand and get good pay and are willing to return therefor a reasonable days' and weeks' service. Therefore, the fact that, prior to the selling hours they assist in the yards and that, during the last one or two days of the week they go to the country to appraise livestock and solicit business do not increase the respondents' expenses for salaries. Therefore, in the distribution of costs hereinafter made to functional accounts, the services of a salesman, for instance, are not divided as between selling, yarding, office work and business getting and maintaining, but are considered as being covered by the reasonable allowance for salesmanship. The same is true in principle with respect to the salaries of other workers such as yardmen and those who are engaged in the office.

116. The cost occasioning factors will as a rule be found to consist of those activities which require the employment of a personnel in the handling of a given number of animals. For instance, since each consignment, however large or small it may be, must be yarded, sold, weighed and accounted for as a separate unit, the greater the number of consignments contained in each hundred thousand of animals handled by a respondent firm the greater will be the [fol. 82] personnel and resultant cost required for such handling. To a less degree the same is true with respect to the number of drafts and of owners and of account sales to the hundred thousand of animals handled. The accompanying table, considered in conjunction with the unit cost per firm of handling the various species of livestock according to modes of arrival, is an illustration of these facts. The accountants' analyses hereinafter described indicate that the greater unit costs attach to livestock coming in with species mixed in a car or in motor trucks or received as so-called "seconds" in the yard and the lesser unit costs attach to the livestock which arrives in railroad cars without species being mixed. This table shows that in the case of cattle, for instance, those coming by straight rail, single

ownership, average for the market as a whole 45 head per owner and 45 head per account sale, which is practically equivalent to per consignment, and 11 head per draft, whereas the mixed rail, single ownership, average only 33 head per owner and 30 head per account sale and approximately 3 head per draft; the drive-ins average 4 head per account sale and 4 head per owner and 2 head per draft; and the seconds average 8 head per account sale and 8 head per owner and less than 4 head per draft. The differences in unit costs hereinbefore discussed have occasioned classifications in rates based on the mode of arrival, but both the testimony of some of the respondents and the conclusions to be drawn from the analyses of the accountants lead to the further conclusion that costs do not depend upon the vehicle in which the livestock was transported to market or the company it kept on the road, but rather on the number of head contained in, the number of owners to, and the number of drafts necessary in each consignment. The table here discussed follows:

[fol. 83] XVIII. Preparation for the Determination of Costs

117. In preparation for the determination of costs in this matter the Government caused to be made an audit of the business done by each respective respondent firm (including corporate and individual respondents) during the year 1929 and, when a re-hearing had been granted, caused to be made similar audits covering the year 1931. These audits were made by trained and experienced accountants, under the supervision of a chief accountant, from the books and records of the respondents. In each instance the year chosen was the last complete calendar year preceding the hearing. The marketing of livestock at Kansas City is such as to render the full calendar year the fairest accounting period. One, among other reasons for this, is that the calendar year presents a complete cycle of marketing of the various classes and grades of livestock. The factors which may occasion light runs at one period of the year are apt to cause correspondingly heavy receipts at another.

118. While in preparation for each hearing it was only practicable to audit the businesses for one calendar year, much information concerning the conditions which affect re-

spondents' businesses and covering a period of many years was obtained and placed in the record. Particularly among these was a showing of the volume of livestock received at the Kansas City stockyard year by year from 1882 to 1931, both inclusive, and month by month from January to September, both inclusive, of the year 1932.

119. In recognition of the fact that the rates prescribed will affect the respondent firms severally and not collectively, it is considered that the several experiences of more than 60 firms, occurring under conditions similar to those which may be expected to prevail when the rates have gone into effect, is more pertinent than would be the experiences of one firm over a number of past years, the circumstances and conditions of many of which long ago have ceased to exist. The audits so prepared were accepted by the respondents as constituting true reflections of the facts disclosed by their books and records of account for the periods covered, though they contended that some items of cost incurred in their business were not shown on their books.

120. From those audits, the Government's chief accountant prepared for the year 1929 a functional cost analysis on a unit basis; that is to say, the audits and auxiliary data indicated the allocation directly to each species of livestock of a large percentage of the total cost incurred by each respondent firm. The remaining cost, which could not be allocated directly, was distributed by the accountant on what he considered appropriate bases.

121. He made a similar analysis covering the year 1931 and for that year also a further analysis, commonly called a "differential study," whereby he broke down the total cost per function and per species and distributed it over the various modes of arrival within each species for each particular firm, to the end that he might discover, for instance, how much it cost a particular firm to yard a hog arriving by motor truck as distinguished from the cost to the same firm for yarding a hog which came in by rail.

(Here follows 1 photo, folio 84)

	Straight Rail		Mixed - Cattle & Calves		Mixed - All Species				Buying	
	S.C.	P.C.	S.C.	P.C.	S.C.	P.C.	Drive-Ins	Seconds	Rail	Drive-Outs
Cattle:										
Cars	31,231	6,112	5,954	3,751	543	401	-	-	14,275	-
Decks	31,231	6,112	5,964	3,751	543	401	-	-	14,275	-
Head	867,253	180,568	197,080	122,531	17,136	12,958	182,764	105,769	491,041	24,908
Drafts	72,509	34,309	45,917	40,661	5,851	6,527	89,737	31,789	43,226	5,963
Owners	18,865	10,876	2,630	8,810	506	2,779	45,441	13,724	10,423	2,365
Account Sales	18,932	9,950	2,650	7,294	508	2,032	45,441	13,724	10,423	2,365
Head per Draft	11.96	5.26	4.29	3.01	2.93	1.99	2.04	3.33	11.36	4.18
Head per Owner	45.97	16.60	74.93	13.91	33.36	4.66	4.02	7.76	47.11	10.53
Head per Account Sale	45.91	18.15	74.37	16.82	33.67	6.38	4.02	7.76	47.11	10.53
Calves:										
Cars	244	23	1,188	592	106	87			471	
Decks	248	23	1,188	592	106	87			471	
Head	14,035	1,228	73,170	36,804	6,885	5,894	98,911	14,987	28,726	4,319
Drafts	623	83	15,421	12,120	3,119	3,546	65,503	5,288	1,373	1,168
Owners	151	30	2,573	4,770	294	2,110	41,010	1,988	423	403
Account Sales	151	28	2,591	4,109	295	1,311	41,010	1,988	423	403
Head per Draft	22.52	14.79	4.74	3.02	2.21	1.66	1.51	.53	20.92	2.94
Head per Owner	92.95	40.93	28.43	7.97	23.42	2.79	2.41	7.56	67.91	10.72
Head per Account Sale	92.95	47.23	28.35	8.91	23.34	4.50	2.41	7.55	67.91	10.72
Hogs:										
Cars	3,145	1,119			748	634			478	
Decks	3,266	1,159			750	647			722	
Head	235,335	83,875			55,671	49,388	678,156	84,673	65,579	23,526
Drafts	12,849	9,328			6,007	8,476	89,095	8,842	1,589	994
Owners	3,007	5,488			529	5,123	89,587	3,710	407	489
Account Sales	3,006	4,969			531	4,072	89,587	3,710	407	489
Head per Draft	18.32	8.99			9.26	5.83	7.61	14.49	41.30	23.67
Head per Owner	78.26	15.28			105.24	9.64	11.38	22.82	161.12	48.11
Head per Account Sale	78.28	16.97			104.84	12.13	11.38	22.82	161.12	48.11
Sheep:										
Cars	5,481	820			48	23			456	
Decks	10,481	1,491			49	24			802	
Head	1,371,805	192,452			6,481	3,399	243,474	2,154	113,338	8,906
Drafts	10,680	4,699			479	374	20,674	112	876	345
Owners	8,225	2,243			59	208	16,635	68	372	229
Account Sales	3,221	1,627			59	133	16,626	68	372	229
Head per Draft	128.44	40.95			13.53	9.09	8.20	19.23	129.37	25.91
Head per Owner	425.37	85.30			109.84	16.58	14.64	31.67	304.66	38.89
Head per Account Sale	425.89	118.28			109.84	25.56	14.64	31.67	304.66	38.89

[fols. 85 & 86] 122. In preparation for both the first and the second hearing the great majority of the respondents employed a trained and experienced accountant who prepared for each of the years 1929 and 1931 analyses similar in purpose to those above described as having been made by the Government accountant, and based them on the same audits. At the first hearing the accountants for the Government and for the respondents, respectively, were in disagreement as to the bases to be used in making indirect allocations or distributions of costs, such as administrative and general expenses, but at the second hearing respondents' accountant, while not endorsing the bases employed by the Government's accountant, did not regard it as worth while to controvert them.

XIX. Items Entering Into Costs

123. Each of the accountants, in making his analysis of the business of the respondents, established a classification of expenses and assigned to it certain items. The classifications are as follows:

Government Accountant	Respondents' Accountant
Salaries:	Salaries and Wages:
Selling and Buying.	Selling and Buying.
Yarding.	Yarding.
Business Getting and Maintaining.	Business Getting and Maintaining.
Office.	Office.
Administrative.	General Supervision.
Expenses:	Expenses:
Yarding.	Yarding.
	Selling and Buying (Horse Expenses).
Office.	Office.
Business Getting and Maintaining.	Business Getting and Maintaining.
Administrative and General.	Administrative and General.
Risk.	Risk.
	Commissions paid (Split Com.)

Items Entering Into Costs—Continued

Interest on Following Capital	Interest on Following Capital
Fixed Assets (including Exchange memberships).	Fixed Assets (including Exchange memberships).
Working Capital to cover: Operating Expenses.	Working Capital to cover: Operating Expenses and Handling Sales and Purchases.
	Investment in Methods and Practices.

* This item, "Commissions paid (Split Commissions)," is included by the Government accountant as a part of the item "Selling and Buying Salaries."

124. It will be observed that with respect to the items of cost, as distinguished from the method of arriving at the amounts of those items, the two accountants were in substantial agreement, except that respondents' accountant includes an item for interest on working capital necessary to handle sales and purchases, and he also includes an item of interest on capital invested in methods and practices. [fol. 87] Neither of these items is covered by the classification made by the Government accountant. Hereinafter, in determining reasonable costs, an allowance is made to cover each and every item common to the classifications of the two accountants; also, similarly, an allowance is made to cover interest on working capital necessary in handling sales and purchases. The methods and practices, the value of which is contended for by respondents as an element of capital, are classified by their accountant under three heads, namely, (1) mailing lists and customer records; (2) office methods, systems, etc., and (3) yard methods and practices.

125. The mailing lists and customer records comprise principally all the names and addresses of those who have patronized and are believed to be still in position to patronize the respective respondent firms who keep the lists. To a lesser extent they contain some names and addresses of those who have not yet patronized the firm keeping the list. These data are acquired and recorded as a part of the normal and usual conduct of respondents' businesses. They

are kept on a card or some similar form of record. Such records constitute a part of the property of the respective respondents who keep them. Therefore, their respective values, such as they may hereafter be found to be, are included as a part of respondents' invested capital.

126. The other matters listed as methods and practices constitute those common day by day routines used in the conduct of respondents' businesses, such, for instance, as the methods of yarding, sorting, selling, and weighing livestock in the yard and the practices of making out and transmitting account of sales to the patrons, remitting the proceeds of sale, and keeping records and other similar matters in the office. Respondents' theory is that if no such routines had been used by any one anywhere and respondents were compelled to employ persons to work them out, costs would be incurred in the discovery of them and further costs in the learning of them by respondents and their employees. Their accountant has arrived at some $66,000 as the total of such costs. These are apportioned among the various firms he represents. The respondents contend that the amounts apportioned to their respective firms should be regarded for rate making purposes as a part of the capital of such firms, interest on which, they say, should be included in the reasonable costs.

127. These items, namely, value of office methods and customs and value of yard methods and practices are not included in respondents' capital, a return of which is coverable into reasonable rates. The reasons for not including them are as follows:

128. They, like the common routines of everyday life generally, while very useful and practically indispensable, are not the property of anyone. They freely may be adopted and used by any who care to do so without the payment of any price or remuneration to any of the respondents in this proceeding. Knowledge of them is a part of the qualifications of respondents' various classes of workers, whether they be owners or employees. They are, in general, learned while the worker is engaged upon and performing other duties for which he is being adequately compensated. When, hereinafter, an allowance is made to cover the salaries of yardmen, salesmen, office workers, etc., it is not contemplated that it would be just or reasonable to

cover into the rates such salaries to be paid to men who [fol. 88] were not acquainted with the common routines necessary in the performance of their work.

XX. Reasonable Unit Costs Plus Reasonable Unit Profits to be Covered Into Reasonable Commission Rates

129. There are more firms and a larger personnel on the Kansas City market than are necessary to dispose of shippers' livestock effectively. A smaller number of firms than are now engaged could handle the business more economically. The Packers and Stockyards Act does not clothe the Secretary of Agriculture with authority to determine how many firms would be required to handle the business properly or what specific firms should be engaged in business or whether some firms are unwisely continuing in business. The Act directs him to prescribe reasonable rates. In order to do this some reasonable standard must be adopted. That adopted herein has already been stated in paragraph 114. In applying this standard it is necessary for the rate maker to inform himself with respect to whether each of the respondent firms is conducting its business economically to the end that the schedule of rates prescribed may not pass unnecessary expenses on to those who pay the rates.

130. Commission rate making is a matter of the exercise of well-informed judgment, guided by mathematical calculation. The importance of statistics and cost of operation of each of the respondents lies in the fact that they are a guide to judgment. In arriving at a reasonable allowance to cover the cost of separate functions, the experience of each firm is considered separately. The use of the mathematical average cost of all firms doing business, as a test of reasonableness of rates would carry into the rates, through the aggregate used in arriving at the average, all the unreasonable and extravagant expenditures, if any, incurred under the rates already in existence. Moreover, the unit costs of many of the firms are high because the volume of business coming to the market is divided among too many firms and handled by an unnecessarily large personnel. To consider as reasonable the average of the unit costs so incurred would compel the maintenance, at the expense of the rate payer, of all who wish to engage in the

business, even though the volume of business they can command be too small to warrant the organization necessary to handle it. In this connection, it is to be observed that while, for example, one salesman may be able to sell 30,000 head of cattle received by one firm, yet if the same volume be divided between two firms, two salesmen will be required. As a test of the reasonableness of rates, the adoption of the lowest costs incurred by the most economically conducted firm would result in a schedule so low as manifestly to be unreasonable as to some firms of normal efficiency. The adoption of the highest costs incurred by the least efficiently managed firms would result in a schedule so high as to be unfair to all shippers of livestock. This same situation obtains with respect to any functional item of expense incurred by any one firm. Since neither the average unit cost of all firms nor the experience of the most efficient firms, nor that of the most inefficient firms, can be taken as a guide to the establishment of rates, some other method of analysis must be adopted.

[fol. 89] 131. In general, the expenses incurred by commission firms fall into two classes: first, those which the conditions of the business tend to hold down, and, second, those which the conditions tend to increase. In arriving at a reasonable cost to be covered into rates in the case of those functions, the expenses of which are automatically held down, the costs as actually incurred by each of the firms should be considered and the reasonable cost arrived at, giving due consideration to the circumstances under which each of the respondents operates. In case of those costs which the conditions of the business tend to increase, such as the cost of salesmanship and the cost of advertising, expenses as actually incurred by any firm or by all of the firms do not furnish an adequate guide to the reasonableness of such cost. In arriving at a reasonable unit cost on account of these functions some additional procedure of approach has to be adopted. That used is discussed hereinafter in those paragraphs wherein the reasonable allowance is determined. The various functional unit items of cost, the findings as to the reasonable allowance for the various functions and the reasoning employed in arriving at the findings are set forth in the following paragraphs.

Salesmanship

132. An important item to be included in reasonable unit costs is a reasonable amount for salesmanship. This function is performed on the Kansas City market by owners of market agencies and by salesmen employed by them on a salary basis. Each of the accountants found unit costs of this item per species of livestock and also according to the respective modes of arrival.

133. Inasmuch as the selling and buying of livestock requires greater skill and judgment than the performance of any other of respondent's functional activities, with the possible exception of management, the proportion of owners as distinguished from employees, engaged in this activity is great. In some firms such owners agreed upon salaries which should be set up on the books for each and paid, if the net result of operations made it possible so to do. In others the owners had merely drawing accounts with division of net owner incomes at the end of a year or some other accounting period. In still others the owners merely divided whatever net owner income happened to arise from the operation. By "net owner income" is meant moneys arising from the operation of the business and available for the personal use of the respective owners, regardless of whether it be considered as compensation for services rendered or profits arising from the ownership of the business or a combination of the two.

134. While the accountant for the Government used, in ascertaining the unit costs of salesmanship, the salaries, drawing accounts and profits of owner salesmen, as well as the salaries of those who were employed, he neither attempted to pass upon the reasonableness of such salaries, drawing accounts or profits of the owner-salesmen nor recommended the inclusion of those of the owners in the costs which are to be used as the basis of reasonable rates. In this proceeding it is not contended by anyone that these owner salaries, drawing accounts or profits should be used as an element of costs. When, however, they are eliminated, and nothing substituted, it causes the salesmanship costs of so many firms to appear extremely low or be absent altogether that no fair normal can be garnered from the unit costs of the remaining firms for this item. In these cir- [fol. 90] cumstances the question becomes one of deter-

mining the amounts to be substituted. The record in this proceeding suggests alternative methods. Respondents contend that there should be substituted an amount representing the personal value of each owner-worker as appraised by a committee selected by respondents. Government counsel argue that the unit cost of salesmanship should be ascertained by relating a reasonable annual salary for a salesman to a reasonable year's performance expressed in terms of the units sold, that is, carloads or head, as the case may be, as was done in Docket 143, the Omaha commission rate case, (See Tagg Bros. and Moorhead v. U. S., 280 U. S. 420) and in every commission rate order issued by the Secretary of Agriculture since that time.

135. In preparation for a hearing in 1929 and again prior to that of 1931, respondents had an appraisal of the owner-workers made by a committee. The committee which made the appraisal in 1929 consisted of six members, and that making the one of 1931 of eight members. These committees had before them the following classes of information: enterprise with which connected; office held or position occupied; number of active co-partners; proportion of personal time involved; manner in which such time employed and proportion devoted to various activities; term of experience in livestock commission business; term of experience in livestock industry; commissions earned by the enterprise; cash value of sales and purchases made to earn such commissions; and, the number of head of livestock handled by species and in total. These committees did not possess any peculiar qualifications for making this appraisal. Even if the appraisal of services such as these could be considered as a matter determinable by expert opinion, any generally well informed citizen with the information at his disposal which the committees had before them could make an equally trustworthy appraisal. But the rejection of the appraisal method rests upon a further and more fundamental ground in that this method seeks to place upon each respondent worker, by name, an annual value based upon such record of his past performance as was before the committee and above which it is unreasonable for him to earn, regardless of his future accomplishments and below which it is unreasonable to expect him to serve, regardless of the small amount of service he

renders. This would seem to be a clear-cut example of the wage fixing condemned in Wolff Packing Co. v. Industrial Court, 262 U. S. 522. As contrasted with this, the performance method urged by Government counsel places no limit, either by way of maximum or minimum, upon the amount of annual compensation which reasonably an owner-salesman may earn. It finds a reasonable compensation to the respondents for the performance of a unit of salesmanship, whether it be done by owner or employee, and leaves the firm in position to expand or contract its reasonable income as it proves successful or unsuccessful in multiplying the units of salesmanship performed. To illustrate, if a fair annual salary be taken as $4000 and a reasonable full year's performance as the sale of 29,000 head of cattle, then the reasonable allowance for salesmanship will be 13.79 cents per head and the owner who is able to sell 35,000 head will be entitled to a compensation of $4,826.50, while one who succeeds in selling only 20,000 head will be entitled only to $2758.

136. The record in this case contains all the information which the committees had before them and in addition many other facts pertinent to the determination of the cost of such services as are performed by owners, among which are the prices at which services such as those rendered by the owners are being bought and sold for on an open, competitive market. Such prices are the test generally re- [fol. 91] garded as proper measures. The record contains some facts which furnish a partial test of the appraisals. Some of the owners whose services in their respective business were appraised by the committee in 1929 later became employees on a salary basis at figures much below those at which their services were appraised. One such owner, a cattle salesman, whose services were appraised by the committee at $4,000 in 1929 was receiving in 1932 a salary of $1700. Another cattle salesman whose services were appraised at $3000 in 1929 was receiving a salary in 1932 of $1800. In another case a hog salesman whose services were appraised at $2500 in 1929 was employed as a cattle yardman in 1932 at a salary of $875.

137. The evidence shows that an important element influencing the value placed by those committees upon the services of owners was the business drawing power of the

owners. These appraisals include also elements on account of risk bearing and executive functions exercised by the owners. All these elements are considered elsewhere and a reasonable allowance made for them in the determination of reasonable unit costs.

138. Since neither owners' salaries, as set up on the books, nor the appraised value of owners' services can be accepted as determinative of the unit costs of salesmanship, some other method must be adopted. That here used is the ascertainment of what the salesman's services are selling for and relating these to what, according to the record, constitutes a reasonable year's work. The salesmanship to be provided for in this order contemplates that it will be of high character, whether performed by owners or by salesmen employed by them. The shipper is entitled to have his livestock sold by the most efficient and competent salesmen available on the market. Such salesmen, whether owners or employees, are entitled to receive a fair reward for their ability and services. An owner, while entitled to reasonable remuneration for management and the assumption of risk, which are ordinarily referred to as profit, is not entitled merely because he is an owner to more for the act of selling livestock than it would cost to get some other equally efficient salesman to perform the selling service for him.

139. The record contains the number of employed salesmen on the yards in 1929 and in 1931, together with the salaries they drew. There were in 1929, 122 employed cattle salesmen, 42 employed hog salesmen, and 11 employed sheep salesmen on the Kansas City market. In 1931 there were 133 employed cattle salesmen, 46 employed hog salesmen, and 14 employed sheep salesmen. The following table shows by salary range the number of salesmen of the various species in the two years and the salary grades into which they fall:

Cattle Salesmen	1929	1931
No. receiving, $6,000 or more	6	4
5,000 to 6,000	3	5
4,000 to 5,000	13	9
3,000 to 4,000	38	32
2,000 to 3,000	30	50
Less than 2,000	32	33
Total	122	133

[fol. 92]

Hog Salesmen			
No. receiving,	$9,300	1	none
	8,800	none	1
	5,095	none	1
	$4,000 to 5,000	2	1
	3,000 to 4,000	10	4
	2,000 to 3,000	16	20
	Under 2,000	13	19
	Total	42	46
Sheep Salesmen			
No. receiving,	7,000	1	1
	4,970	1	none
	4,887	none	1
	4,800	1	none
	$3,000 to 4,000	4	2
	2,000 to 3,000	3	6
	Under 2,000	1	4
	Total	11	14

In order to earn these salaries the employed salesmen performed actual selling and handling livestock in the yards, and spent time in the country doing appraisal and publicity work. The record does not show for employed salesmen the amount of work done by any individual. The average number of head per salesman sold during the course of the year by the salesmen of a firm does not furnish a measure of the ability or the capacity of any individual salesman. The record contains opinions of salesmen as to what they consider a reasonable year's work on the Kansas City market where there are seasonable variations in the receipts of livestock and where the days of heaviest receipts come during the early part of the week.

140. A salesman employed by one of the respondents testified that a good salesman should sell 1,500 cars of cattle in a year. Another witness employed by a respondent stated that a good salesmen can sell well as much as 2,000 cars per year. Another, a respondent, stated that a butcher salesman could sell 1,600 cars of butcher stuff in a year, and should be able to sell that many cars of steers. He stated also that a hog salesman should sell more than 1,600 cars of hogs, and that a sheep salesman should sell from 1,500 to 2,000 cars of sheep. On one day during the first hearing a salesman who is a member of one of the respondent firms sold about 30 cars of cattle, most of which had been carried over from the previous day on account of an unsatisfactory market. It is the opinion of some of the salesmen that they could sell more livestock than they do

sell if they had the opportunity to exercise fully their selling ability.

141. The number of animals per straight car received by the various respondents varies somewhat according to the character of the business done, but the normal and usual number of head of cattle contained in a straight car is approximately 28 head, calves 57 head, hogs 75 head, and sheep 250 head.

[fol. 93] 142. Giving due consideration to the conditions under which salesmanship is performed on the Kansas City market, the volume of livestock handled by the respective firms and the estimates of salesmen as to what constitutes a reasonable year's work, it would be reasonable to expect a good and experienced salesman to sell in a year from 27,000 to 32,000 head of animals of the bovine species as they arrive at the Kansas City stockyard in the year 1931; a hog salesman from 75,000 to 100,000 head of hogs in a year; and a sheep salesman from 240,000 to 275,000 head of sheep.

143. If the selling of 29,000 head of cattle and calves, which is below the estimate of any witness as to what constitutes a reasonable year's work, be taken as the work to be done in order to earn a salary of $4000, which is in the high salary range being paid salesmen on the Kansas City market, the reasonable cost to the shipper on account of the function of salesmanship is 13.79 cents per head. Likewise, if the selling of 85,000 head of hogs be considered a reasonable year's work, and $3000, which is in the high salary range, be taken to be a corresponding remuneration, the salesmanship cost to the shipper on account of hogs is approximately 3.529 cents per head. If the selling of 250,000 head of sheep be considered to be a year's work for which a $3500 a year salary is compensatory, the reasonable per head cost to the shipper for salesmanship on account of sheep is 1.4 cents per head. On the basis of all the facts in the record it is found that the following constitute reasonable per head costs to be covered into rates on account of salesmanship:

Cattle and Calves	$.1379
Hogs	.0353
Sheep	.0140

Yarding Salaries

144. The handling of livestock in the yard occasions expenses on account of salaries paid to those who do the yarding. The accountant for the Government allocated yarding salaries direct to species. The per head cost of yarding salaries on account of each species, irrespective of mode of arrival, is shown in the following tables:

Cattle and Calves

Firm No.	No. of Head	Yarding Salaries	Firm No.	No. of Head	Yarding Salaries
66	3656	$.0064	16	26673	$.0699
34	52225	.0129	14	42094	.0706
67	454	.0140	12	67947	.0711
79	11360	.0278	26	30383	.0719
83	122107	.0279	65	40303	.0720
15	14983	.0311	63	128888	.0721
9	3113	.0388	75	25113	.0746
87	991	.0395	10	119514	.0781
35	61658	.0400	59	164860	.0784
30	23436	.0425	20	32320	.0811
54	185312	.0481	71	62038	.0818
61	10731	.0489	6	15841	.0830
[fol. 94]					
37	2122	$.0490	25	53312	$.0840
53	28568	.0496	51	22495	.0849
70	38967	.0517	29	25581	.0880
73	79012	.0531	4	35763	.0895
56	34058	.0535	82	110449	.1015
42	67492	.0565	36	86051	.1023
60	19205	.0584	84	67609	.1044
46	157432	.0619	19	12570	.1112
74	8750	.0621	78	10819	.1139
52	21690	.0642	72	2397	.1206
18	59107	.0650	77	23436	.1230
48	42359	.0665	13	63945	.1285
62	31539	.0666	7	15790	.1353
55	61113	.0676	17	11336	.1399
23	34942	.0682	76	9619	.1635
33	1479	.0695	11	1878	.2130

Hogs

Firm No.	No. of Head	Yarding Salaries	Firm No.	No. of Head	Yarding Salaries
82	30135	$.0059	10	96653	$.0305
29	12619	.0060	4	9552	.0309
67	6015	.0081	46	33474	.0316
34	16312	.0112	37	35	.0329
78	4738	.0136	26	20321	.0332
66	737	.0151	79	2969	.0355
70	13628	.0185	75	5134	.0358
48	5952	.0195	16	8498	.0357
59	70554	.0196	36	147922	.0364
52	6196	.0197	7	41090	.0366
18	11653	.0207	51	159184	.0367
84	2364	.0207	30	3489	.0395
77	10192	.0218	12	28132	.0400
61	9679	.0222	35	12017	.0421
87	399	.0228	13	40816	.0439
6	8168	.0228	73	34425	.0507
42	11442	.0230	15	20743	.0599
20	3727	.0235	9	19051	.0601

Hogs

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
76	8629	.0263	54	27122	.0632
63	150806	.0263	25	19201	.0641
71	20323	.0267	11	2990	.0710
62	15810	.0284	60	21164	.0721
83	4078	.0287	55	21227	.0760
56	8191	.0290	14	27819	.1112
65	7619	.0299	53	18764	.1241
17	6872	.0300			

[fol. 95]

Sheep

Firm No.	No. of Head	Yarding Salaries	Firm No.	No. of Head	Yarding Salaries
43	140481	$.0030	1	43274	$.0081
54	591028	.0034	5	209208	.0086
35	44036	.0041	87	96975	.0095
63	43330	.0051	59	205441	.0097
36	36575	.0065	61	991	.0105
44	267391	.0078	10	94843	.0156

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of yarding salaries are as follows:

$.075 per head as to cattle and calves
.030 per head as to hogs
.008 per head as to sheep

Yarding Expenses

145. The per head cost of yarding expenses on account of each species is as follows:

Cattle and Calves

Firm No.	No. of Head	Yarding Expenses	Firm No.	No. of Head	Yarding Expenses
61	10731	$.0003	20	32320	$.0110
37	2122	.0009	84	67609	.0114
6	15841	.0014	77	23436	.0116
15	14983	.0026	55	61113	.0116
78	10819	.0028	53	28558	.0121
16	26673	.0040	17	11336	.0124
34	52225	.0045	10	119514	.0125
88	2897	.0051	26	30383	.0127
30	23436	.0054	36	86051	.0128
33	1479	.0054	18	59107	.0129
56	34058	.0075	51	22495	.0133
54	185312	.0078	25	53312	.0135
82	110449	.0080	14	42009	.0143
13	63945	.0082	83	122107	.0146
75	25113	.0082	29	25581	.0150
7	15790	.0084	52	21690	.0151
46	157432	.0084	48	42359	.0154
70	38967	.0090	23	34942	.0158
12	67947	.0093	42	67492	.0159
65	40303	.0095	74	8750	.0169
4	35763	.0096	63	128888	.0172
35	61658	.0100	60	19205	.0173
62	31539	.0103	71	62038	.0181
73	79012	.0104	19	12570	.0202
59	164860	.0105			

[fol. 96]

Hogs

Firm No.	No. of Head	Yarding Expenses	Firm No.	No. of Head	Yarding Expenses
14	27819	$.0001	10	96653	$.0004
48	5952	.0001	52	6196	.0005
54	27122	.0001	25	19201	.0006
61	9679	.0001	35	12017	.0006
83	4078	.0001	77	10192	.0006
36	147922	.0001	78	4738	.0006
4	9552	.0002	62	15810	.0007
6	8168	.0002	73	34425	.0007
7	41090	.0002	15	20743	.0009
18	11653	.0002	75	5134	.0010
34	16312	.0002	79	2969	.0010
55	21227	.0002	26	20321	.0010
59	70554	.0002	30	3489	.0011
63	150805	.0002	71	20323	.0012
46	33474	.0003	29	2619	.0012
82	30135	.0003	23	1536	.0013
13	40816	.0004	42	11442	.0014
20	3727	.0004	17	6872	.0015
51	159184	.0004	88	249	.0045
53	18764	.0004	65	7619	.0088
60	21164	.0004			

Sheep

Firm No.	No. of Head	Yarding Expenses	Firm No.	No. of Head	Yarding Expenses
18	3157	$.0001	60	753	$.0003
46	7795	.0001	82	2007	.0003
63	43330	.0001	53	733	.0005
73	4035	.0001	75	2487	.0005
36	36575	.0001	77	1635	.0005
13	5688	.0002	78	3432	.0005
35	44036	.0002	15	3854	.0006
55	3685	.0002	17	756	.0006
83	2380	.0002	26	2657	.0007
6	1220	.0003	29	734	.0007
20	872	.0003	71	1414	.0011
25	3676	.0003	30	533	.0046
51	6942	.0003	42	1460	.0130
52	4320	.0003	65	2184	.0131

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of yarding expenses are as follows:

$.014 per head as to cattle and calves
.0060 per head as to hogs
.0004 per head as to sheep

[fol. 97]

Office Salaries

146. The per head cost on account of office salaries allocated to each of the species is as follows:

Cattle and Calves

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
6	15841	$.0010	46	157432	$.0550
17	11336	.0143	54	185312	.0558
83	122107	.0203	75	25113	.0567
71	62038	.0206	76	9619	.0570
14	42094	.0217	73	79012	.0575
34	52225	.0239	20	32320	.0628
35	61658	.0240	52	21690	.0629
42	67492	.0256	7	15790	.0631
53	28558	.0330	78	10819	.0656
13	63945	.0382	61	10731	.0692
63	128888	.0367	23	34942	.0693
82	110449	.0373	29	25581	.0707
10	119514	.0396	70	38967	.0730
62	31539	.0396	25	53312	.0734
30	23436	.0414	56	34058	.0810
55	61113	.0441	65	40303	.0879
77	23436	.0442	74	8750	.1002
26	30383	.0447	51	22495	.1150
60	19205	.0449	19	12570	.1192
12	67947	.0450	11	1878	.1195
59	164860	.0458	33	1479	.1385
18	59107	.0460	9	3113	.1472
79	11360	.0484	37	2122	.1567
48	42359	.0492	66	3656	.1629
36	86051	.0518	72	2397	.1784
4	35763	.0525	67	454	.1821
15	14983	.0529	88	2897	.1955
84	67609	.0534	87	991	.2117
16	26673	.0544			

Hogs

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
6	8168	$.0004	10	96653	$.0313
17	6872	.0076	52	6196	.0319
34	16312	.0115	78	4738	.0322
14	27819	.0117	70	13628	.0336
61	9679	.0146	59	70554	.0339
71	20323	.0152	67	6015	.0365
53	18764	.0181	12	28132	.0366
42	11442	.0189	65	7619	.0384
63	150806	.0194	11	2990	.0395
77	10192	.0195	20	3727	.0403
13	40816	.0198	46	33474	.0423
79	2969	.0209	16	8498	.0451
15	20743	.0210	75	5134	.0503
35	12017	.0214	23	1536	.0505

[fol. 98]

Hogs

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
51	159184	$.0229	54	27122	$.0514
73	34425	.0231	30	3489	.0518
4	9552	.0232	33	1690	.0537
76	8629	.0232	84	11944	.0553
7	41090	.0233	19	4497	.0579
60	21164	.0238	9	19051	.0585
55	21227	.0253	25	19201	.0604
18	11653	.0259	83	4078	.0614
36	147922	.0262	74	2364	.0685
62	15810	.0266	37	35	.0874
82	30135	.0270	56	8191	.0933
48	5952	.0278	72	1077	.0970
26	20321	.0292	87	399	.1030
29	12619	.0300	66	737	.1480
			88	249	.2100

Sheep

Firm No.	No. of Head	Office Salaries	Firm No.	No. of Head	Office Salaries
6	1220	$.0005	52	4320	$.0189
1	43274	.0013	36	36575	.0191
17	756	.0042	51	6942	.0194
59	205441	.0044	65	2184	.0195
44	67391	.0055	16	1570	.0199
54	591028	.0059	23	862	.0201
84	150283	.0067	55	3685	.0204
35	44036	.0068	12	3439	.0206
14	7365	.0071	62	3065	.0212
79	2273	.0074	7	1295	.0252
18	3157	.0078	46	7795	.0264
4	1896	.0095	78	3432	.0283
87	96975	.0102	60	753	.0284
43	140481	.0105	82	2007	.0284
5	209208	.0108	20	872	.0291
83	2380	.0110	25	3676	.0316
10	94843	.0113	34	190	.0341
76	1553	.0115	70	2507	.0346
63	43330	.0131	29	734	.0374
15	3854	.0135	67	580	.0388
73	4035	.0135	48	430	.0395
77	1635	.0149	19	1252	.0449
42	1460	.0158	11	175	.0490
56	4924	.0158	74	333	.0520
13	5688	.0162	33	805	.0676
61	991	.0165	30	533	.0689
71	1414	.0172	37	321	.0757
53	733	.0173	9	598	.0796
75	2487	.0181	66	283	.1609
26	2657	.0185	72	45	.1764

[fol. 99] On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of office salaries are as follows:

$.0525 per head as to cattle and calves
.0300 per head as to hogs
.0100 per head as to sheep

Office Expenses

147. The per head cost on account of office expenses allocated to each of the species is as follows:

Cattle and Calves

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
88	2897	$.0016	26	30383	$.0328
37	2122	.0017	78	10819	.0328
72	2397	.0091	46	157432	.0331
84	67609	.0138	61	10731	.0345
16	26673	.0147	70	38967	.0360
76	9619	.0158	77	23436	.0366
4	35763	.0163	75	25113	.0371

Cattle and Calves

Firm No.	Head No. of	Expenses Offices	Firm No.	Head No. of	Expenses Offices
59	164860	.0186	71	62038	.0379
67	454	.0190	34	52225	.0401
23	34942	.0214	30	23436	.0402
12	67947	.0217	15	14983	.0411
54	185312	.0219	73	79012	.0419
7	15790	.0222	35	61658	.0429
18	59107	.0232	62	31539	.0430
42	67492	.0236	6	15841	.0434
83	122107	.0236	82	110449	.0443
36	86051	.0238	60	19205	.0447
52	21690	.0251	19	12570	.0455
56	34058	.0269	79	11360	.0456
33	1479	.0272	14	42094	.0458
65	40403	.0279	20	32320	.0461
10	119514	.0290	13	63945	.0493
48	42359	.0291	11	1878	.0538
17	11336	.0292	74	8750	.0543
63	128888	.0292	29	25581	.0546
53	28558	.0301	51	22495	.0573
25	53312	.0302	87	991	.1042
55	61113	.0313	9	3113	.1947

Hogs

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
37	35	$.0011	42	11442	$.0175
88	249	.0016	12	28132	.0176
67	6015	.0038	11	2990	.0178
76	8629	.0048	55	21227	.0179
72	1077	.0049	6	8168	.0179

[fol. 100]

Cattle and Calves

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
61	9679	$.0073	34	16312	$.0193
4	9552	.0073	79	2969	.0198
7	41090	.0082	54	27122	.0202
33	1690	.0106	26	20321	.0215
51	159184	.0114	19	4497	.0220
36	147922	.0121	10	96653	.0229
65	7619	.0121	60	21164	.0237
16	8498	.0122	29	12619	.0239
52	6196	.0127	14	27819	.0244
18	11653	.0130	25	19201	.0249
83	4078	.0131	46	33474	.0255
59	70554	.0137	13	40816	.0256
84	11944	.0142	71	20323	.0280
63	150806	.0147	62	15810	.0288
17	6872	.0154	20	3727	.0295
23	1536	.0157	56	8191	.0310
77	16192	.0162	82	30135	.0311
78	4738	.0162	75	5134	.0330
15	20743	.0163	74	236	.0373
48	5952	.0164	35	120	.0382
53	18764	.0165	87	99	.0502
70	13628	.0165	30	480	.0503
73	34425	.0166	9	38	.0774

Sheep

Firm No.	No. of Head	Office Expenses	Firm No.	No. of Head	Office Expenses
37	321	$.0008	77	1635	$.0121
84	150283	.0017	35	44036	.0123
59	205441	.0018	83	2380	.0125
54	591028	.0023	25	3676	.0128
4	1896	.0031	33	805	.0133
76	1553	.0032	26	2657	.0138
18	3157	.0039	78	3432	.0140
67	580	.0041	55	3685	.0147
43	140481	.0042	14	7365	.0147
87	96975	.0050	42	1460	.0149
5	209208	.0053	46	7795	.0159
56	4924	.0053	53	733	.0161
16	1570	.0055	19	1252	.0171
44	267391	.0055	70	2507	.0173
65	2184	.0062	1	43274	.0181
23	862	.0063	6	1220	.0211
79	2273	.0070	13	5688	.0213
52	4320	.0076	11	175	.0217
17	756	.0082	48	430	.0218
61	991	.0082	20	872	.0223
10	94843	.0083	62	3065	.0234
7	1295	.0086	60	753	.0275
76	1553	.0089	74	333	.0275
72	45	.0091	29	734	.0289
[fol. 101]					
51	6942	$.0096	71	1414	.0314
73	4035	.0097	82	2007	.0323
12	3439	.0099	34	190	.0574
63	43330	.0099	30	533	.0671
15	3854	.0103	9	598	.1039
75	2487	.0118			

On the basis of the foregoing and of the general information contained in the record, it is found that the reasonable and normal costs to be covered into rates on account of office expenses are as follows:

$.0300 per head as to cattle and calves
.0175 per head as to hogs
.0050 per head as to sheep

Business Getting and Maintaining Expenses

148. The per head cost on account of business getting and maintaining expenses allocated to each of the species is as follows:

Cattle and Calves

Firm No.	No. of head	Business getting and maintaining expenses
76	9619	$.0058
66	3656	.0107
67	454	.0170
15	14983	.0219

Firm No.	No. of head	Business getting and maintaining expenses
37	2122	.0229
72	2397	.0241
9	3113	.0264
56	34058	.0371
65	40303	.0371
61	10731	.0377
23	34942	.0399
29	25581	.0455
17	11336	.0474
60	19205	.0489
48	42359	.0508
7	15790	.0519
16	26673	.0520
33	1479	.0540
79	11360	.0540
51	22495	.0543
36	86051	.0576
30	23436	.0581
87	991	.0599
55	61113	.0612
18	59107	.0628
77	23436	.0632
78	10819	.0639
46	157432	.0647
75	25113	.0656

[fol. 102]

Cattle and Calves

Firm No.	No. of head	Business getting and maintaining expenses
6	15841	$.0672
83	122107	.0677
34	52225	.0699
13	63945	.0714
84	67609	.0724
59	164860	.0732
25	53312	.0735
74	8750	.0750
71	62038	.0756
52	21690	.0763
20	32320	.0797
14	42094	.0780

Cattle and Calves—Continued

Firm No.	No. of head	Business getting and maintaining expenses
82	110449	.0819
26	30383	.0873
12	67947	.0884
54	185312	.0924
19	12570	.0974
73	79012	.1057
42	67492	.1112
70	38967	.1149
35	61658	.1188
4	35763	.1232
63	128888	.1262
53	28558	.1346
10	119514	.1448
62	31539	.1655
88	2897	.2783

Hogs

Firm No.	No. of head	Business getting and maintaining expenses
76	8629	$.0022
66	737	.0060
67	6015	.0082
9	19051	.0082
72	1077	.0104
15	20743	.0108
20	3727	.0130
56	8191	.0142
37	35	.0157
48	5952	.0161
61	9679	.0161
65	7619	.0163
59	70554	.0164
87	399	.0184
29	12619	.0191
78	4738	.0191
16	8498	.0235
17	6872	.0238
60	21164	.0238

Hogs—Continued

[fol. 103]

Firm No.	No. of head	Business getting and maintaining expenses
36	147922	$.0238
33	1690	.0240
79	2969	.0251
18	11653	.0252
84	11944	.0255
51	159184	.0259
70	13628	.0260
14	27819	.0261
77	10192	.0262
30	3489	.0265
7	41090	.0267
83	4078	.0268
34	16312	.0272
75	5134	.0277
25	19201	.0292
6	8168	.0302
54	27122	.0302
23	1536	.0309
46	33474	.0321
71	20323	.0324
19	4497	.0327
13	40816	.0340
55	21227	.0344
74	2364	.0344
4	9552	.0353
52	6196	.0373
12	28132	.0393
82	30135	.0394
63	150806	.0410
26	20321	.0421
73	34425	.0467
53	18764	.0490
10	96653	.0535
42	11442	.0544
35	12017	.0546
62	15810	.0773
88	249	.1834

Sheep

Firm No.	No. of head	Business getting and maintaining expenses
76	1553	$.0017
66	283	.0055
56	4924	.0058
15	3854	.0066
67	580	.0070
84	150283	.0081
20	872	.0091
73	4035	.0092
65	2184	.0093
87	96975	.0094
72	45	.0104
18	3157	.0111

[fol. 104]

9	598	$.0111
1	43274	.0116
16	1570	.0129
55	3685	.0131
48	430	.0140
54	591028	.0140
79	2273	.0141
37	321	.0142
75	2487	.0155
23	862	.0158
4	1896	.0163
46	7795	.0173
17	756	.0181
36	36575	.0181
5	209208	.0194
61	991	.0195
77	1635	.0195
78	3432	.0199
83	2380	.0199
29	734	.0204
12	3439	.0206
44	267391	.0208
25	3676	.0211
33	805	.0216
60	753	.0217
70	2507	.0219

Sheep—Continued

Firm No.	No. of head	Business getting and maintaining expenses
51	6942	.0229
59	205441	.0234
14	7365	.0236
7	1295	.0238
30	533	.0241
10	94843	.0246
13	5688	.0248
19	1252	.0254
52	4320	.0262
71	1414	.0263
35	44036	.0269
74	333	.0273
6	1220	.0279
63	43330	.0283
82	2007	.0305
26	2657	.0317
43	140481	.0323
53	733	.0353
42	1460	.0399
34	190	.0429
62	3065	.0651

An amount reasonably necessary for business maintenance is an item properly coverable into a schedule of reasonable rates. Any expenditure above this amount directed toward increasing the volume of business should be recouped from the additional business obtained. Competition [fol. 105] in the commission business is extremely keen and results in a race for getting business which does not manifest itself in a reduction of rates but consists largely in efforts by each market agency to take some of the business away from the other market agencies. Since the rates of most of the respondents are uniform, there is little inducement for the shipper to select one market agency in preference to another because of the rates charged. Business is attached in many cases by reason of ties of personal friendship; in other cases by the estimate of the character of services rendered. Each market agency holds its services out to be of the highest quality and endeavors to convince the shipper of this fact. Under these conditions the amount expended for business getting and maintaining

is limited only by what can be afforded under the existing rates, whatever they may be, and by such limits as the respondents impose upon themselves. If excessive expenditures on this account be covered into a rate schedule, every shipper pays to have himself persuaded to send his livestock to one commission firm rather than to another which presumably can serve him equally well. Moreover, as already pointed out, some of the expenditures incurred to get and hold business are covered in general expenditures and in the salaries of salesmen employed, in part at least, on account of the business which they control as well as on account of the salesmanship which they perform. On the basis of all the facts in the record it is found that the reasonable amount to be covered into rates and paid by the shipper on account of business getting and maintaining should not exceed 10 percent of the total reasonable cost, and reasonable profit.

Administrative and General Expenses

149. The per head cost on account of administrative and general expenses, namely, telephone and telegraph, directors' fees, legal and auditing, taxes, meals, clearing house, general and miscellaneous, allocated to each of the species, is as follows:

Cattle and Calves

Firm No.	No. of head	Administrative and general expenses
67	454	$.0038
72	2397	.0039
66	3656	.0039
37	2122	.0091
17	11336	.0101
56	34058	.0138
61	10731	.0141
9	3113	.0142
14	42094	.0164
15	14983	.0182
11	1878	.0187
62	31539	.0188
71	62038	.0209
76	9619	.0213
75	25113	.0220
65	40303	.0224
20	32320	.0229

Cattle and Calves—Continued

[fol. 106]

Firm No.	No. of head	Administrative and general expenses
26	30383	$.0229
16	26673	.0230
12	67947	.0241
13	63945	.0244
29	25581	.0245
30	23436	.0247
6	15841	.0250
52	21690	.0258
19	12570	.0261
34	52225	.0263
77	23436	.0265
46	157432	.0269
54	185312	.0270
25	53312	.0272
42	67492	.0275
48	42359	.0280
7	15790	.0282
33	1479	.0292
55	61113	.0293
70	38967	.0301
18	59107	.0309
82	110449	.0330
51	22495	.0331
53	28558	.0334
73	79012	.0351
36	86051	.0351
60	19205	.0356
59	164860	.0362
10	119514	.0389
23	34942	.0400
84	67609	.0405
79	11360	.0411
4	35763	.0448
63	128888	.0454
35	61658	.0499
74	8750	.0539
78	10819	.0580
83	122107	.0714

Cattle and Calves—Continued

Firm No.	No. of head	Administrative and general expenses
87	991	.0775
88	2897	.1156

Hogs

Firm No.	No. of head	Administrative and general expenses
67	6015	$.0008
72	1077	.0021
61	9679	.0030
66	737	.0036
17	6872	.0054
37	35	.0054
9	19051	.0057
11	2990	.0062

[fol. 107]

76	8629	$.0064
15	20743	.0072
14	27819	.0089
65	7619	.0097
29	12619	.0104
7	41090	.0105
33	1690	.0114
6	8168	.0116
77	10192	.0117
19	4497	.0126
62	15810	.0126
13	40816	.0127
34	16312	.0127
52	6196	.0130
73	34425	.0133
70	13628	.0139
20	3727	.0147
26	20321	.0155
71	20323	.0155
56	8191	.0159
48	5952	.0163
51	159184	.0166
55	21227	.0169
18	11653	.0173

Hogs—Continued

Firm No.	No. of head	Administrative and general expenses
79	2969	.0178
36	147922	.0178
53	18764	.0183
60	21164	.0189
16	8498	.0191
12	28132	.0195
75	5134	.0195
4	9552	.0199
42	11442	.0203
46	33474	.0207
25	19201	.0223
63	150806	.0228
82	30135	.0232
54	27122	.0250
59	70554	.0267
78	4738	.0285
23	1536	.0294
10	96653	.0307
30	3489	.0308
74	2364	.0368
87	150806	.0376
83	4078	.0396
84	11944	.0419
35	12017	.0445
88	249	.1249

[fol. 108]

Sheep

Firm No.	No. of head	Administrative and general expenses
67	580	$.0008
56	4924	.0027
54	591028	.0028
17	756	.0031
61	991	.0033
59	205441	.0035
87	96975	.0037
43	140481	.0037
66	283	.0039
72	45	.0040

Sheep—Continued

Firm No.	No. of head	Administrative and general expenses
76	1553	.0043
46	7795	.0043
37	321	.0044
15	3854	.0046
65	2184	.0050
5	209208	.0051
84	150283	.0051
18	3157	.0052
14	7365	.0053
79	2273	.0064
75	2487	.0070
11	175	.0078
52	4320	.0078
73	4035	.0078
9	598	.0079
16	1570	.0080
4	1896	.0086
77	1635	.0088
1	43274	.0092
26	2657	.0093
19	1252	.0098
62	3065	.0102
13	5688	.0105
12	3439	.0110
7	1295	.0110
20	872	.0111
10	94843	.0111
23	862	.0118
25	3676	.0120
6	1220	.0122
29	734	.0125
46	7795	.0129
55	3685	.0131
36	36575	.0131
51	6942	.0139
33	805	.0142
35	44036	.0143
70	2507	.0145

Sheep—Continued

[fol. 109]

Firm No.	No. of head	Administrative and general expenses
63	43330	$.0154
71	1414	.0174
53	733	.0179
48	430	.0210
60	753	.0219
82	2007	.0241
78	3432	.0250
74	333	.0290
83	2380	.0377
30	533	.0411
34	190	.0418
42	1460	.0519

On the basis of these facts and all the information contained in the record, it is found that the following are reasonable per head costs to be covered into rates on account of administrative expenses:

$.0330 per head as to cattle and calves.
.0200 per head as to hogs.
.0050 per head as to sheep.

Insurance.

150. Many of the risks incident to the conduct of the commission business are insurable; others are not. The expenses on account of premiums paid to carry insurable risks are costs properly coverable into a reasonable schedule of commission rates. Mortgage and theft, fire, and workmen's compensation insurance are the three types most generally carried by the respondents. The expenses on account of carrying these types of insurance are ascertainable and can be expressed in terms of per head costs in the case of each species. Mortgage and theft insurance premiums are quoted by insurance companies in standard cars defined as "25 head of cattle, 60 head of calves, 80 head of hogs, and 100 head of sheep." The rates are 10 cents per carload of livestock irrespective of species. This is $.00357 per head for cattle; $.00125 per head as to hogs; and $.001 per head as to sheep.

151. Workmen's compensation insurance is optional in the states of Missouri and Kansas, in which the respondents conduct their business. Some of the respondents carry this type of insurance; others do not. Nevertheless, it is a legitimate cost to be provided for. A sufficient allowance should be made in the rates prescribed to enable each of the respondents either to carry this type of insurance or to set up a reserve against losses incurred. The cattle facilities of the stockyard company, where the majority of the respondents carry on their business, are located mainly in the State of Missouri, while the hog house is located in the State of Kansas. The auditor for the respondents segregated the expenses which he attributed to workmen's compensation on the basis of salaries paid in the State of Kansas and those paid in the State of Missouri. Premiums on account of this type of insurance are all on the basis of [fol. 110] employee payroll. The yardwork payroll on account of hogs is occasioned largely in the State of Kansas, and the yardwork payroll on account of cattle and calves, and sheep is occasioned largely in the State of Missouri. The office payroll is occasioned jointly by all of the livestock handled. The auditor for the respondents attributed to all the firms represented by him $993.07, premiums on account of workmen's compensation for yard workers, to the State of Kansas; $7,048.27 to yard workers in Missouri; and $93.47 to office workers. For all practical purposes he attributed $993.07 to hogs; $7,048.27 to cattle and calves, and sheep; and $93.47 to cattle and calves, hogs and sheep. The two accountants were in practical agreement as to the amount necessary to provide for insurance premiums. The accountant for the Government set up $911.76 for all respondents for fire insurance premiums, and the accountant for the respondents who are members of the Exchange set up $841.40.

152. In considering the reasonable per head expense on account of some other functions the experience of each firm has been gone into and the normal arrived at on the basis of the experience of each individual firm. The use of an average based upon an aggregate of the expenses of the firms under consideration has been condemned and the reason therefor given. In the case of expenses in which the amounts involved are so small, the consideration of the market as a whole or the consideration of the experience

of each of the respondents would lead substantially to the same result. Because of this fact the figures for the market as a whole are used in arriving at the reasonable per head costs on account of insurance.

153. Premiums for workmen's compensation on account of cattle and calves, and sheep have been allocated to these species on the basis of the yard payroll occasioned by each. All premiums paid in the State of Kansas have been attributed to hogs. Office workmen's compensation premiums and fire insurance premiums are occasioned by all species. The sum of $93.47, office workmen's compensation premiums, and $841.40, fire insurance premiums, have been allocated to the various species on the basis of account sales and account purchases. These allocations result in attributing $7,219 to cattle and calves; $1,240 to hogs; and $517 to sheep. The per head expenditure on this basis is $.0032 for cattle and calves; $.0012 for hogs; and $.0003 for sheep.

154. This results in a per head allowance on account of the types of insurance discussed herein of $.00677 per head for cattle and calves; $.00245 per head for hogs; and $.0013 per head for sheep.

Interest on Capital

155. A legitimate cost to be covered into rates and paid by shippers of livestock is a reasonable amount for interest on the capital necessary in the conduct of the commission business. Inasmuch as a separate allowance to cover the uninsurable risks and contingencies is hereafter provided for in profit, the reasonable rate of return herein found represents interest on the use of capital.

156. Three witnesses testified in the second hearing as to what constitutes a reasonable rate of return under the conditions above stated. Two of them were bankers called by [fol. 111] the respondents and the third an economist called by the Government. One of the bankers and the economist are in substantial agreement. The economist, who testified first, gave it as his opinion that an allowance of 6 percent interest on the value of the fixed assets would be reasonable and that a rate somewhere between 6 and 8 percent on the amount of liquid working capital necessary in the business would be reasonable. One of the bankers called by

the respondents gave it as his opinion that the Secretary of Agriculture would act fairly in arriving at a rate of return if he based his conclusions upon this opinion. The other banker called by the respondents stated that, in his judgment, a reasonable rate of return would be 20 percent. The inference to be drawn from his testimony, however, is that he had in mind an interest rate high enough not only to pay for the use of the capital but also to cover the risks incident to the business. The bank of which he is an official assesses charges against various of the respondents for the temporary overdrafts they make at his bank. The rates charged vary and depend, in part, upon the average amount of the deposits carried by them. He stated that the charge made by his bank to the respondents on these overdrafts would average around 7 percent.

157. In determining the reasonable amount of capital to be considered in the case of each of the respondents, the amount as determined by the accountant for those respondents who are members of the Livestock Exchange has been considered. A segregation of capital has been made into fixed and working capital. Fixed capital has been taken to be the amount as determined by the accountant for the respondents represented by the following items, namely, furniture, fixtures and equipment; materials and supplies; Exchange memberships; and mailing lists and customer records. On the value of these, interest at 6 percent has been computed in the case of each firm. On the amount of working capital determined by the accountant for the respondents interest has been computed at 7 percent. The sum of the interest on fixed assets and interest on working capital, expressed in cents per head, has been set up as to each firm.

158. The following tables set forth by firms the per head interest on account of selling, calculated on the basis stated above:

Cattle and Calves

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
48	36376	$.0022	20	27615	$.0139
19	9941	.0031	53	26901	.0141
84	62243	.0051	26	28553	.0144
87	953	.0053	7	14931	.0147
59	138133	.0055	61	10042	.0147
34	26859	.0069	78	7125	.0153

Cattle and Calves

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
54	117345	.0069	15	12797	.0155
55	47630	.0070	74	6732	.0162
83	45799	.0071	9	2191	.0163
82	90682	.0076	29	24297	.0174
51	22013	.0078	6	10253	.0178
46	99113	.0084	16	23073	.0184
63	89771	.0092	62	28109	.0187
13	55362	.0093	77	21031	.0187
65	35698	.0097	35	55998	.0189
[fol. 112]					
56	29689	.0100	4	33160	.0193
42	59341	.0101	17	9707	.0215
70	32595	.0102	52	18614	.0231
18	46755	.0109	76	6872	.0265
69	9475	.0115	66	1503	.0324
75	20363	.0116	60	14265	.0374
25	42045	.0118	88	2273	.0463
71	53940	.0122	72	1934	.0494
14	35159	.0125	11	1708	.0529
23	26219	.0125	67	382	.0594
73	73218	.0125	37	2122	.0624
12	59216	.0130	33	1218	.0737
30	22770	.0134			

Hogs

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
61	8801	$.0007	6	7962	$.0051
19	3068	.0009	16	8425	.0051
59	64996	.0016	23	1536	.0055
51	156853	.0017	4	9171	.0055
55	20575	.0020	62	15594	.0056
54	23261	.0021	15	20406	.0059
46	32905	.0025	17	6258	.0063
56	7899	.0027	35	11775	.0067
63	116670	.0027	52	6193	.0071
70	13427	.0028	76	7986	.0078
34	11223	.0028	87	226	.0078
13	40786	.0028	82	29780	.0081
18	11358	.0029	84	9880	.0860
42	11015	.0031	73	18720	.0086
65	7610	.0032	66	737	.0103
71	20141	.0036	60	19875	.0107
48	5893	.0036	78	3260	.0111
25	18661	.0036	79	2969	.0126
20	3727	.0039	77	9507	.0129
14	27771	.0039	72	1045	.0134
12	27121	.0039	11	2990	.0259
53	18759	.0041	75	4922	.0174
7	37426	.0043	67	5931	.0177
26	20075	.0044	74	2364	.0185
9	17642	.0048	33	1690	.0215
29	12428	.0048	83	3292	.0634
30	3489	.0048	88	422	.0942

[fol. 113] Sheep

Firm No.	No. of Head	Interest	Firm No.	No. of Head	Interest
19	741	$.0003	12	2450	$.0028
51	6196	.0007	7	1295	.0031
59	191587	.00076	73	3770	.0031
44	248022	.00084	16	359	.0033
54	565861	.00096	77	1532	.0034
55	2947	.0012	17	439	.0037
13	5687	.00137	4	1583	.0038
56	4924	.0014	76	1356	.0038
63	24716	.00144	84	103847	.0039
5	205880	.00145	66	283	.0044
61	638	.0016	78	3432	.0046
70	2484	.0016	1	42372	.00492
46	7002	.0017	33	805	.00493
87	93327	.00175	20	511	.0052
15	3805	.0018	82	1927	.0052
65	1284	.0018	75	2487	.0062
18	2732	.0020	79	2237	.0062
25	3067	.00212	53	534	.0063
62	3063	.0022	29	734	.0068
26	2544	.00229	11	175	.0084
9	598	.0023	37	321	.0084
67	500	.0023	14	5916	.00867
35	40948	.00245	33	805	.0094
6	1220	.0026	83	1545	.0235
52	4081	.0026			

It is found that the following are reasonable allowances per head on account of interest:

$.015 per head as to cattle and calves.
.007 per head as to hogs.
.004 per head as to sheep.

Profits

159. In addition to producing reasonable per head costs incident to the handling of the different species of livestock, reasonable rates should provide also a per head profit, that is, compensation for management and the carrying of uninsurable risk. The two cooperative market agencies and some of the other respondents are managed by employees. The remuneration received by employee-managers gives some indication as to what efficient management costs. In 1929 two of the respondent firms had employee-managers who did no selling. The cost of management was 92 cents per car in the case of one, and 99 cents in the case of the other. In 1931 the same two firms were paying a dollar per car and 80 cents per car. A per head allowance on the basis of one dollar a car as to each species has been made on account of management.

[fol. 114] 160. The risks assumed by respondents may be said to fall roughly into three general classes. First, those

against which insurance actually is carried by at least some of the respondents. Second, those of such a nature that insurance against them is conceivable, though not actually obtainable. Third, those involving a decline in, or cessation of respondents' businesses. The first class has been covered by an allowance in the reasonable cost under the item "insurance."

161. The second class comprises whatever liability respondents assume when they sell livestock, the title to which is defective; errors entering into accounting processes; failure of purchasers to make payments; litigation arising on account of bank failures; freight undercharges; and sales of diseased or defective livestock. The experience of the respondents as reflected in the audits of their books and accounts for the years 1929 to 1931 indicate that the losses suffered on account of the risks of this class amount to only a few cents per car. A per head allowance on the basis of 10 cents per car as to each species has been made on account of this class of uninsurable risk.

162. The third class consists of the danger that, through economic changes or failure of those in charge of the businesses properly to conduct them, the volume of business enjoyed may decline even to the point where it becomes impracticable to continue the conduct of the business. It seems quite clear that nothing should be included in the rates to cover risks or losses due to bad management. It may be that the same is true of risks and losses arising from economic changes. But whoever should bear these risks there is no practicable way of appraising them. The rates hereinafter prescribed represent something more than the reasonable cost plus reasonable profit. That something consists of a substantial spread between the total of the reasonable costs and profits as found and the rates as prescribed, and is more than the amount reasonably to be allowed to cover such errors and omissions as may have crept into the rate making process.

Summary of Reasonable Selling Costs Plus Reasonable Profits

163. A summary of the foregoing findings as to reasonable per head costs and reasonable profits for selling each

species of livestock arriving at the Kansas City market is as follows:

	Cattle and Calves	Hogs	Sheep
Salesmanship	$.1379	$.0353	$.0140
Yarding Salaries	.0750	.0300	.0080
Yarding Expenses	.0140	.0060	.0004
Office Salaries	.0525	.0300	.0100
Office Expenses	.0300	.0175	.0050
Business Getting and Maintaining	.0450	.0180	.0059
Administrative and General Expenses	.0330	.0200	.0050
Insurance	.0070	.0025	.0013
Interest	.0150	.0070	.0040
Total Cost	.4094	.1663	.0536
Profit			
To cover management	.0350	.0133	.0040
To cover uninsurable risks	.0035	.0014	.0004
Total reasonable cost and reasonable profit	$.4479	$.1810	$.0580

[fol. 115] 164. The audits covering the respective years 1929 and 1931 show, as a rule, only slight differences in the expenses of the respondent firms who operated in both of those years. There occurred, too late to be reflected in the audits for 1931, increases in certain of respondents' lesser expenses, such as postage and taxation, but through salary and wage cuts, also made too late to be reflected in the audits, there occurred considerable decreases in one of the major expenses of the business. It follows, therefore, that the above stated costs cover the situation as it existed before the depression brought about reductions in expenses.

Buying Costs

165. Most of the respondent commission firms and all of the respondent order buyers are engaged in the buying of livestock on a commission basis. The commission men consider their buying activities as supplementary to their selling activities. Some of the salesmen also buy. In some firms there are those employed as buyers only. For the most part the same personnel employed in one activity is also engaged in the other. This is particularly true with respect to the office and yard forces. Most of the items of costs incident to the business of the commission firms are incurred jointly in selling and buying. Their unit costs for buying are the same in amount as those shown above

for selling, except as to the items for salesmanship and for interest.

166. The record indicates that in the normal course of business a competent buyer can buy as many animals of a species as an equally competent salesman can sell. This fact, coupled with buying salaries paid, indicates that the cost to the respondent commission men for buying a unit of livestock is somewhat less than the cost of selling a like unit. Somewhat more capital is needed in the buying of livestock than in the selling of it. The interest cost is, therefore, somewhat greater.

167. An analysis of the costs incurred by those respondents engaged solely in the order buying business leads to the conclusion that their unit costs for buying do not vary greatly from those incurred by the commission men in their buying activities.

168. On the basis of all the facts of record and the inferences to be drawn from the record, it is found that the rates charged for buying livestock on the Kansas City market should not exceed those for selling livestock.

XXI. Rate Structure

169. Livestock does not arrive at market in standard units. It may arrive in lots of from one to many head. On the one hand such consignments may be of the same grade and may sell at one price, and require only one draft; on the other hand it may consist of many classes sold to various buyers and require numerous weight drafts. Obviously, the work occasioned in handling livestock under such circumstances will vary greatly and the cost of performing the service on different consignments will vary also. A tariff of rates and charges constructed to meet each variation and to assess precisely the cost occasioned [fol. 116] by handling each consignment against that particular consignment, would be unduly complex. A schedule of rates which attempted to do exact justice by every consignment would be so complex as to be difficult of interpretation and impracticable of application. A tariff simple enough to be practicable and easy of application will work some inequities in some individual cases. A reasonable schedule of rates should do as nearly exact justice

as is practicable. Therefore, the rate maker's problem is to find a structure which, when applied to the particular businesses under consideration, will avoid as far as possible unwieldy complexity on the one hand and on the other a simplicity which brings about too many arbitrary distinctions and too much inequity. From time to time attempts have been made to smooth out all arbitrary distinctions. The result has been not only a complexity undesirable in itself but also the creation by such complexity of new inequities. It is recognized, therefore, that any tariff structure which may be adopted can be applied to circumstances which, though not unique, are unusual, and thereby shown to work inequities. Bearing this in mind, balancing advantage against disadvantage, it is believed that a tariff structure only sufficiently complex to avoid serious inequities with respect to normal transactions is to be preferred.

170. Except as to Tariff No. 3, hereinafter discussed, market agency rate schedules at Kansas City have in the past been based quite generally upon the carlot of livestock as the unit of charge. The reason for this has been that the carlot has been the unit of handling. Until comparatively recently practically all the livestock handled by market agencies at the Kansas City stockyard arrived there in railroad cars. The sales pens in the stockyard were constructed to hold one carlot comfortably and conveniently. It was the custom of buyers to buy by the carlot. In probably the majority of instances the single carlot was synonymous with the single consignment. With the growth of the practice of bringing livestock to market by motor truck and the increasing custom of buyers to purchase animals in less than carlots, as hereinbefore described, these conditions changed.

171. The filing by the great majority of the respondents of their Tariff No. 3 raises in this proceeding an issue not heretofore present in commission rate determinations made by the Secretary of Agriculture, namely, whether the rates prescribed by this order should be set up in the structure heretofore customary, or according to that desired by the respondents last above referred to, or in some modification of one or the other of those structures.

172. The record here shows that the consignment is the unit of handling. The consignment is, therefore, the unit

of cost. Many items of cost attach to the consignment in substantially the same amount, regardless of whether it contains many or few animals. The identity of a consignment must be preserved throughout its entire handling in the stockyard; it must be separately accounted for by the office force. Some items of cost tend to increase as the number of animals in a consignment becomes greater, but probably none increase in direct proportion.

173. Certain modes of arrival of animals at the stockyard affect the number of animals contained in the respective consignments. On the whole, a thousand head of ani- [fol. 117] mals arriving by truck will represent more separate consignments than a similar number arriving by rail. This fact has caused it to be said that the so-called "truck-ins" are more expensive to handle than the rail arrivals, but analysis of the costs shown in the record, as well as the opinions of competent witnesses therein contained, compel the conclusion that it is not the mode of arrival but the average size of the consignment which fixes the per head cost of handling the animals. To base differentials in rates upon the modes of arrival is therefore to attack the problem indirectly rather than directly and produces different charges for handling the same species, number, weight, kind, grade, and quality of animals in two separate consignments merely because one happened to come to the market in a vehicle propelled by gasoline and the other is one drawn by steam.

174. The various commission rate tariffs in force from time to time at the Kansas City stockyard since the effective date of the Packers and Stockyards Act, 1921, are in the record. At least since that date the tariffs have always contained some rates stated on a head basis, and they have also recognized at least one rate distinction based on differences in weights. Reference is here made to the common provision that bovine animals weighing on the average 400 lbs. or less, and called "calves", are handled at rates considerably lower than those weighing more than 400 lbs., and called "cattle." That this is purely a weight distinction becomes apparent when it is borne in mind that it is the average per head weight of the entire draft which controls and that thereby a 1500 lb. bull may become a calf

by being weighed together with a sufficient number of bovines weighing from 200 to 300 pounds each.

175. In the filing of Tariff No. 3 respondents sought to readjust the structure of their schedules to the changed character of their business. In the formulation of this new tariff they tested certain suggested schedules by practical applications of them to the transactions they actually were handling. By a process of trial and error they arrived at a tariff which, though not going so far as some of them advocated, nevertheless constituted a step in the direction of a structure better fitted to the business of today than was the structure which it replaced.

176. At the last hearing in this proceeding this tariff structure was subjected to close scrutiny and analysis. The evidence compels the conclusion that while some inequities would result from an application of the principles upon which it was based, nevertheless on the whole such inequities are both fewer and less severe than those which would result from the application of the principles which had been discarded. Certain characteristics of this Tariff No. 3 appear to do violence to the basic principles upon which it rests. There is, for instance, no difference in the rates for calves or cattle coming in by truck, as compared with those arriving by rail, but 5 cents more per head is charged for truck-in yearlings than for those coming in railroad cars, and quite generally the rates on truck-in sheep are higher than for those coming by rail. Also, a lower rate is made for so-called "yard sales" or "seconds," than for freshly arriving livestock.

177. The tariff structure adopted in this order eliminates these and other inconsistencies but otherwise follows in structure the aforesaid Tariff No. 3. It contains for the [fol. 118] bovine species a weight class known as "yearlings", and a weight distinction as between light swine or pigs and heavy swine or hogs. In recognition of the fact that, as heretofore stated, the cost of handling a consignment does not increase directly in proportion to the increased number of head in the consignment, the tariff structure here adopted uses a consignment charge graduated according to the number of head in the consignment.

178. That which has been said with respect to the structure of the schedule for selling applies also to the structure for buying.

XXII. The Reasonableness of Existing Rates

179. Upon the basis of the reasonable costs hereinbefore determined and upon a consideration of the entire record, it is found that respondents' schedules of rates and charges now under investigation contain rates and charges which are unreasonable and unjustly discriminatory.

XXIII. Reasonable Rates

180. Upon the basis of all the foregoing and the entire record, it is found that rates not in excess of the following are schedules of just and reasonable rates:

Article I

Definitions

Calves are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 400 pounds or under.

Yearlings are animals of the bovine species, weighed in drafts, the average weight of the animals in which is from 401 pounds to 800 pounds.

Cattle are animals of the bovine species, weighed in drafts, the average weight of the animals in which is 801 pounds or over.

Pigs are swine, weighed in drafts, the average weight of the animals in which is 130 pounds or under.

Hogs are swine, weighed in drafts, the average weight of the animals in which is 131 pounds or over.

A draft is all those animals in one consignment weighed as a single sales or purchase classification.

A consignment for the purpose of assessing selling charges, is all the livestock of one species delivered in the name of one person to one market agency to be offered for sale during the trading hours of one day, provided, however, that when the livestock of several owners arrives in one car, and in not more than one car, each species in that carlot shall be considered as one consignment.

[fol. 119] A consignment, for the purpose of assessing buying charges, is all the livestock of one species bought at any time but shipped or delivered to one person on one market day.

A person is an individual, a partnership, a corporation, and/or an association of any such acting as a unit.

Article II

Selling Charges

Section A, Calves, Yearlings, and Cattle

Calves:

Consignments of one head	40¢ per head
Consignments of more than one head	
1 to 20 head inclusive	25¢ per head
Each head over 20	15¢ per head

Yearlings:

Consignments of one head	80¢ per head
Consignments of more than one head	
1 to 20 head inclusive	45¢ per head
Each head over 20	25¢ per head

Cattle:

Consignments of one head	80¢ per head
Consignments of more than one head	
1 to 20 head inclusive	70¢ per head
Each head over 20	50¢ per head

Section B, Swine

Pigs:

Consignments of one head	35¢ per head
Consignments of more than one head	
1 to 40 head inclusive	20¢ per head
Each head over 40	5¢ per head

Hogs:

Consignments of one head	35¢ per head
Consignments of more than one head	
1 to 40 head inclusive	25¢ per head
Each head over 40	5¢ per head

[fol. 120] Section C, Sheep or Goats

Sheep or Goats:

Consignments of one head	35¢ per head
Consignments of more than one head	
For the first 10 head in each 300 head	25¢ per head
" " next 50 " " " " "	15¢ per head
" " next 60 " " " " "	5¢ per head
" " next 130 " " " " "	2¢ per head
" " next 50 " " " " "	1¢ per head

Article III

Extra Service Charges

The following extra service charges are applicable to all species:

For each additional weight draft over 3, on account of sales classification	15¢
For each additional check, each additional account of sales, each proceeds deposit or bank credit, over 1	5¢

Article IV

Buying Charges

The rates for buying livestock of the various species shall not be in excess of those for selling like species.

Order

It is ordered that the respondent market agencies, and each and every one of them, on and after 30 days from the date hereof, cease and desist from demanding or collecting for any stockyard service the rate or charge shown therefor in the schedule of rates and charges now on file with the Secretary of Agriculture.

It is further ordered that on and after 30 days from the date hereof neither the respondent market agencies nor any of them shall publish, demand or collect any rate or charge for the furnishing of any stockyard service in ex-

cess of the rate or charge hereinbefore determined to be just, reasonable and non-discriminatory for the furnishing of such service.

It is further ordered that at least ten days prior to the date upon which this order becomes effective each and every of the respondent market agencies publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act, 1921, and the regulations of the Secretary of Agriculture thereunder, a schedule showing all rates and charges for the stockyard services furnished by such respondent at the Kansas City Stock- [fols. 121-147] yards, Kansas City, Missouri, and all rules and regulations changing, affecting or determining such rates or charges, and that no rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just, reasonable and non-discriminatory for such service.

It is further ordered that a copy of this order be transmitted by registered mail to each and every one of the respondent market agencies.

In witness whereof the Secretary of Agriculture has signed this order and caused the official seal of the Department of Agriculture to be affixed hereto in the City of Washington this 14th day of June, 1933.

Henry A. Wallace, Secretary of Agriculture.

(Here follow tables, side folios 148 & 149)

[fol. 148]

EXHIBIT "C" TO PETITION

Comparison of So-Called "Reasonable" Unit-Costs per Order of June 14, 1933, and Total Costs as Found by Government Accountants and as Claimed by Respondents (59 Firms) for the Test Year 1931

	Selling & Buying No. of Head 59 Firms	Allowances per Order June 1933		Total Costs as Claimed		Order's Allowances in Recess (Excesses Shown *)		Differences betw Govt & Resp's Costs (Govt Recess*)
		Rate per Head	Amount	By Government Bachmann Exhibits	Respondents	Of Govt. Costs	Of Resp Costs	
Cattle & Calves								
Salesmanship & Buying	2,284,207	$0.1379	$314,992.15	$351,248.83	$410,161.43	$ 36,256.68	$ 95,169.28	$ 58,912.60
Yarding Salaries	.....	0.0750	171,315.53	221,737.54	236,083.76	50,422.01	64,768.23	14,346.22
Yarding Expenses	.....	.0140	31,978.90	29,269.39	29,349.00	* 2,709.51	* 2,629.90	79.61
Office Salaries	.....	.0525	119,920.87	136,767.01	126,232.46	16,846.14	6,311.59	* 10,534.55
Office Expenses	.....	.0300	68,526.61	71,533.10	74,004.24	3,006.49	5,478.03	2,471.54
Business Getting & Mtce	.....	.0450	102,789.32	326,303.91	296,248.94	223,514.59	193,459.62	* 30,054.97
Adm & Genl Expenses	.....	.0330	75,378.83	75,366.43	81,373.82	* 12.40	5,994.99	6,007.39
Insurance (Risk Expense)	.....	.0070	15,989.45	30,433.98	24,010.06	14,444.53	8,020.61	* 6,423.92
Return on Investment	.....	.0150	34,263.11	26,730.01	44,452.54	* 7,533.10	10,189.43	17,722.53
Total "Costs"	.....	.4094	$935,154.77	$1,269,390.20	$1,321,916.25	$ 334,235.43	$ 386,761.88	$52,526.05
Profit—Management	.....	.0350	79,947.25	54,082.62	86,160.47	* 25,864.63	6,213.22	32,077.85
Uninsurable Risks	.....	.0035	7,994.72	.....	.....	* 7,994.72	* 7,994.72	.....
Total Cost+Profit	.....	.4479	$1,023,096.74	$1,323,472.82	$1,408,076.72	$300,376.08	$384,980.38	$84,603.90
Hogs								
Salesmanship & Buying	1,045,048	$0.0353	$36,890.19	$56,621.73	$63,547.69	$ 19,731.54	$ 26,657.50	$ 6,925.96
Yarding Salaries	.....	.0300	31,351.44	62,975.60	65,297.42	31,624.16	33,945.98	2,321.82
Yarding Expenses	.....	.0060	6,270.29	2,274.92	2,247.49	* 3,995.37	* 4,022.80	* 27.43
Office Salaries	.....	.0300	31,351.44	36,958.26	41,332.72	5,606.82	9,981.28	4,374.46
Office Expenses	.....	.0175	18,288.34	19,426.59	26,110.38	1,138.25	7,822.04	6,683.79
Business Getting & Mtce	.....	.0180	18,810.86	52,043.54	101,008.13	33,232.68	82,197.27	48,964.59
Adm & Genl Expenses	.....	.0200	20,900.96	18,800.21	19,240.86	* 2,100.75	* 1,660.10	440.65
Insurance (Risk Expense)	.....	.0025	2,612.62	5,508.06	4,971.47	2,895.44	2,358.85	* 536.59
Return on Investment	.....	.0070	7,315.34	5,707.31	10,444.59	* 1,608.03	3,129.25	4,737.28
Total "Costs"	.....	.1665	$173,791.48	$260,316.22	$334,200.75	$ 86,524.74	$ 160,409.27	$73,884.53
Profit—Management	.....	.0133	13,899.14	9,121.51	19,777.10	* 4,777.63	5,877.96	10,655.59
Uninsurable Risks	.....	.0014	1,463.07	.....	.....	* 1,463.07	* 1,463.07	.....
Total Costs+Profit	.....	.1810	$189,153.69	$269,437.73	$353,977.85	$80,284.04	$164,824.16	$84,540.12
Sheep								
Salesmanship & Buying	1,896,608	$0.0140	$26,552.51	$26,199.42	$33,323.47	$ * 353.09	$ 6,770.96	$ 7,124.05
Yarding Salaries	.....	.0080	15,172.86	14,765.66	15,471.40	* 407.20	298.54	705.74
Yarding Expenses	.....	.0004	758.64	8,726.11	8,673.93	7,967.47	7,915.29	* 52.18
Office Salaries	.....	.0100	18,966.08	16,601.47	19,715.03	* 2,364.61	748.95	3,113.56
Office Expenses	.....	.0050	9,483.04	8,850.50	9,856.62	* 632.54	373.58	1,006.12
Business Getting & Mtce	.....	.0059	11,189.99	49,522.74	53,885.19	38,332.75	42,695.20	4,362.45
Adm & Genl Expenses	.....	.0050	9,483.04	9,125.72	8,512.70	* 357.32	* 970.34	* 613.02
Insurance (Risk Expense)	.....	.0013	2,465.59	5,044.25	3,331.73	2,578.66	866.14	* 1,712.52
Return on Investment	.....	.0040	7,586.43	5,918.27	4,822.08	* 1,668.16	* 2,764.35	* 1,096.19
Total "Costs"	.....	.0536	$101,658.18	$144,754.14	$157,592.15	$ 43,095.96	$ 55,933.97	$12,838.01
Profit—Management	.....	.0040	7,586.43	6,660.94	9,928.78	* 925.49	2,342.35	3,267.84
Uninsurable Risks	.....	.0004	758.64	.....	.....	* 758.64	* 758.64	.....
Total Costs+Profit	.....	.0580	$110,003.25	$151,415.08	$167,520.93	$41,411.83	$57,517.68	$16,105.85
All Species								
Salesmanship & Buying	.....	.....	$378,434.85	$434,069.98	$507,032.59	$ 55,635.13	$128,597.74	$ 72,962.61
Yarding Salaries	.....	.....	217,839.83	299,478.80	316,852.58	81,638.97	99,012.75	17,373.78
Yarding Expenses	.....	.....	39,007.83	40,270.42	40,270.42	1,262.59	1,262.59	.....
Office Salaries	.....	.....	170,238.39	190,326.74	187,280.21	20,088.35	17,041.82	* 3,046.53
Office Expenses	.....	.....	96,297.99	99,810.19	109,971.24	3,512.20	13,673.25	10,161.05
Business Getting & Mtce	.....	.....	132,790.17	427,870.19	451,142.26	295,080.02	318,352.09	23,272.07
Adm & Genl Expenses	.....	.....	105,762.88	103,292.38	109,127.38	* 2,470.47	3,364.55	5,835.02

	Selling & Buying No. of Head 59 Firms	Allowances per Order June 1933		By Government Bachmann Exhibits	Respondents	Order's Allowances in Excess (Excesses Shown *)		Differences betw Govt & Resp's Costs (Govt Recess*)
		Rate per Head	Amount			Of Govt. Costs	Of Resp Costs	
Cattle & Calves								
Salesmanship & Buying	2,284,207	$0.1379	$314,992.15	$351,248.83	$410,161.43	$ 36,256.68	$ 95,169.28	$ 58,912.60
Yarding Salaries		0.0750	171,315.53	221,737.54	236,083.76	50,422.01	64,768.23	14,346.22
Yarding Expenses		.0140	31,978.90	29,269.39	29,349.00	* 2,709.51	* 2,629.90	79.61
Office Salaries		.0525	119,920.87	136,767.01	126,232.46	16,846.14	6,311.59	* 10,534.55
Office Expenses		.0300	68,526.61	71,533.10	74,004.24	3,006.49	5,478.03	2,471.54
Business Getting & Mtce		.0450	102,789.32	326,303.91	296,248.94	223,514.59	193,459.62	* 30,054.97
Adm & Genl Expenses		.0330	75,378.83	75,366.43	81,373.82	12.40	5,994.99	6,007.39
Insurance (Risk Expense)		.0070	15,989.45	30,433.98	24,010.06	14,444.53	8,020.61	* 6,423.92
Return on Investment		.0150	34,263.11	26,730.01	44,452.54	* 7,533.10	10,189.43	17,722.53
Total "Costs"		.4094	$935,154.77	$1,269,390.20	$1,321,916.25	$ 334,235.43	$ 386,761.88	$52,526.05
Profit—Management		.0350	79,947.25	54,082.62	86,160.47	* 25,864.63	6,213.22	32,077.85
Uninsurable Risks		.0035	7,994.72	.....	.....	* 7,994.72	* 7,994.72	.....
Total Cost+Profit		.4479	$1,023,096.74	$1,323,472.82	$1,408,076.72	$300,376.08	$384,980.38	$84,603.90
Hogs								
Salesmanship & Buying	1,045,048	$0.0353	$36,890.19	$56,621.73	$63,547.69	$ 19,731.54	$ 26,657.50	$ 6,925.96
Yarding Salaries		.0300	31,351.44	62,975.60	65,297.42	31,624.16	33,945.98	2,321.82
Yarding Expenses		.0060	6,270.29	2,274.92	2,247.49	* 3,995.37	* 4,022.80	* 27.43
Office Salaries		.0300	31,351.44	36,958.26	41,332.72	5,606.82	9,981.28	4,374.46
Office Expenses		.0175	18,288.34	19,426.59	26,110.38	1,138.25	7,822.04	6,683.79
Business Getting & Mtce		.0180	18,810.86	52,043.54	101,008.13	33,232.68	82,197.27	48,964.59
Adm & Genl Expenses		.0200	20,900.96	18,800.21	19,240.86	* 2,100.75	* 1,660.10	* 440.65
Insurance (Risk Expense)		.0025	2,612.62	5,508.06	4,971.47	2,895.44	2,358.85	* 536.59
Return on Investment		.0070	7,315.34	5,707.31	10,444.59	* 1,608.03	3,129.25	4,737.28
Total "Costs"		.1665	$173,791.48	$260,316.22	$334,200.75	$ 86,524.74	$ 160,409.27	$73,884.53
Profit—Management		.0133	13,899.14	9,121.51	19,777.10	* 4,777.63	5,877.96	10,655.59
Uninsurable Risks		.0014	1,463.07	.....	.....	* 1,463.07	* 1,463.07	.....
Total Costs+Profit		.1810	$189,153.69	$269,437.73	$353,977.85	$80,284.04	$164,824.16	$84,540.12
Sheep								
Salesmanship & Buying	1,896,608	$0.0140	$26,552.51	$26,199.42	$33,323.47	$ * 353.09	$ 6,770.96	$ 7,124.05
Yarding Salaries		.0080	15,172.86	14,765.66	15,471.40	* 407.20	298.54	705.74
Yarding Expenses		.0004	758.64	8,726.11	8,673.93	7,967.47	7,915.29	* 52.18
Office Salaries		.0100	18,966.08	16,601.47	19,715.03	* 2,364.61	748.95	3,113.56
Office Expenses		.0050	9,483.04	8,850.50	9,856.62	* 632.54	373.58	1,006.12
Business Getting & Mtce		.0059	11,189.99	49,522.74	53,885.19	38,332.75	42,695.20	4,362.45
Adm & Genl Expenses		.0050	9,483.04	9,125.72	8,512.70	* 357.32	* 970.34	* 613.02
Insurance (Risk Expense)		.0013	2,465.59	5,044.25	3,331.73	2,578.66	866.14	* 1,712.52
Return on Investment		.0040	7,586.43	5,918.27	4,822.08	* 1,668.16	* 2,764.35	* 1,096.19
Total "Costs"		.0536	$101,658.18	$144,754.14	$157,592.15	$ 43,095.96	$ 55,933.97	$12,838.01
Profit—Management		.0040	7,586.43	6,660.94	9,928.78	* 925.49	2,342.35	3,267.84
Uninsurable Risks		.0004	758.64	.....	.....	* 758.64	* 758.64	.....
Total Costs+Profit		.0580	$110,003.25	$151,415.08	$167,520.93	$41,411.83	$57,517.68	$16,105.85
All Species								
Salesmanship & Buying			$378,434.85	$434,069.98	$507,032.59	$ 55,635.13	$128,597.74	$ 72,962.61
Yarding Salaries			217,839.83	299,478.80	316,852.58	81,638.97	99,012.75	17,373.78
Yarding Expenses			39,007.83	40,270.42	40,270.42	1,262.59	1,262.59	.....
Office Salaries			170,238.39	190,326.74	187,280.21	20,088.35	17,041.82	* 3,046.53
Office Expenses			96,297.99	99,810.19	109,971.24	3,512.20	13,673.25	10,161.05
Business Getting & Mtce			132,790.17	427,870.19	451,142.26	295,080.02	318,352.09	23,272.07
Adm & Genl Expenses			105,762.83	103,292.36	109,127.38	* 2,470.47	3,364.55	5,835.02
Insurance (Risk Expense)			21,067.66	40,986.29	32,313.26	19,918.63	11,245.60	* 8,673.03
Return on Investment			49,164.88	38,355.59	59,719.21	* 10,809.29	10,554.33	21,363.62
Total "Costs"			$1,210,604.43	$1,674,460.56	$1,813,709.15	$ 463,856.13	$ 603,104.72	$139,248.59
Profit—Management			101,432.82	69,865.07	115,866.35	* 31,567.75	14,433.53	46,001.28
Uninsurable Risks			10,216.43	.....	.....	* 10,216.43	* 10,216.43	.....
Total Costs+Profit			$1,322,253.68	$1,744,325.63	$1,929,575.50	$422,071.95	$607,321.82	$185,249.87

[fol. 149]

In United States District Court

STATEMENT AS TO PETITIONS FILED IN CASES NO. 2329 TO 2378, INC.

The petitions filed in the several remaining cases being Docket Nos. In Equity Nos. 2329–2378, Inc., are identical with the petition above set out and filed in Case No. 2328, except in respect to the name of the individual plaintiff (or plaintiffs) and the amounts in dollars or percentages appearing in Section VIII of each of the petitions applicable under the allegations to the particular plaintiff in the specific suit. The name or names of the plaintiff (or plaintiffs), the number of the suit, and the specific amounts set forth in the order of their appearance in Section VIII of each petition are for the purpose of brevity condensed and set forth in the following table:

Docket No.	Name of Plaintiff	Amount Appearing in First Paragraph of Sub-Section (a) of Section VIII	Amounts Appearing Seriatim in Second Paragraph of Sub-Section (a) of Section VIII					Amounts Appearing Seriatim in Second Paragraph of Sub-Section (b) of Section VIII	
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
2329	J. M. Ragland, W. B. Storts and W. L. Burrus, partners d/b as Ragland, Storts & Burrus L. S. Com. Co.	$12,587.72	8%	13%	15.50%	6.53%	13.59%	$.....	$6,500.00
2330	H. H. Klecker, d/b as Hinie Klecker Sheep Com. Co.	5,058.70	19%	76%	.....%	.....%	13.91%	$356.79	$6,000.00
2331	R. H. Lewis and S. H. Flournoy, Partners d/b as Lewis-Flournoy Livestock Com. Co.	6,824.37	17%	11%	12.98%	2.56%	12.04%	1492.97	7,000.00
2332	Grover C. Maxwell and Ben J. Furnish, Partners d/b as Maxwell-Furnish Livestock Com. Co.	4,628.73	..%	..%	11.30%*	.32%	6.14%	1900.84	8,000.00
2333	John M. Nichols, d/b as John M. Nichols L. S. Com. Co.	6,119.05	..%	..%	11.75%	1.82%	5.96%	None	4,000.00
2334	Bowles Livestock Com. Co., a Corporation	16,820.69	11%	18%	17.78%	1.95%	8.81%	None	.....
2335	Crider Brothers Com. Co., a Corporation	14,340.07	.6%	14%	14.02%	2.46%	9.42%	28.37	12,400.00
2336	Chas. Dixon Commission Co., a Corporation	14,311.67	2%*	26%	19.05%	.54%	7.38%	None	10,800.00
2337	E. W. Elliott & R. K. Swain, Partners d/b as Elliott Swain & Company	4,443.84	16%	1%	13.48%	.70%	8.68%	2032.93	7,200.00
2338	Farrar, Davis & Campbell Livestock Com. Co., a Corpn.	7,316.99	22%	8%	14.52%	.16%	6.39%	1507.90	10,900.00
2339	W. G. Gladish, d/b as Gladish Livestock Co. Co.	4,904.47	13%	9%	12.57%*	.99%	11.02%	1579.80	7,000.00
2340	O. C. Haggart, John H. Wilson, and Glenn Haggart, Partners d/b as Haggart-Wilson L. S. Com. Co.	11,339.08	3%	8%	13.19%	5.89%	5.48%	2241.16	15,150.00
2341	Wm. M. Liggett, d/b as K. C. Livestock Com. Co.	10,403.29	6%	10%	15.09%	3.98%	6.97%	None	6,000.00
2342	Fern O. Sanders, d/b as Fern O. Sanders L. S. Com. Co.	9,494.05	7%*	53%	11.16%	1.15%	9.25%	506.01	6,000.00
2343	Stuart-Robinson-Hoover Company, a Corpn.	26,583.86	16%	24%	14.99%	2.29%	12.91%	4308.63	22,200.00
2344	R. W. Wester & Joseph P. Smith, Partners, d/b as Wester Brothers & Smith Commission Company	7,408.63	20%*	9%	14.97%	.54%	8.67%	135.90	8,100.00
2345	Stagner, Pieronnet & Willis L. S. Com. Co., a Corpn.	9,535.85	1%	6%	13.47%	1.16%	9.49%	27.59	10,400.00
2346	Geo. S. Tamblyn, d/b as Tamblyn Com. Co.	5,950.72	..%	..%	14.49%	.55%	6.69%	1240.58	8,500.00
2347	Henry F. Carnes, d/b as H. F. Carnes L. S. Com. Co.	1,570.66	24%	19%*	15.89%	2.96%	2.34%	403.88	1,500.00
2348	Warren Cummings, d/b as Warren Cummings L. S. Com. Co.	12,082.91	6%	16%	11.71%	5.94%	8.44%	1564.32	6,000.00
2349	Drumm-Standish Com. Co., a Corpn.	27,682.12	52%*	28%	15.04%	1.22%	10.56%	None	29,500.00
2350	Link Fasken, d/b as Link Fasken L. S. Com. Co	480.03	..%	..%	11.66%	.....%	5.26%	402.50	750.00
2351	H. E. Long, Robt. B. Perry, and B. W. Perry, Partners d/b as Long-Perry Livestock Com. Co.	11,043.17	6%	14%	18.07%	2.23%	7.59%	2102.73	14,000.00
2352	L. E. Tice, d/b as Knight & Tice Sheep Com. Co.	3,947.78	14%	31%	.....%	.....%	11.06%	2860.39	5,000.00
2353	Chas. F. Vieregg & Robt. H. Stover, Partners, d/b as W. M. Leitch Sheep Com. Co.	2,162.76	13%	11%	.....%	.....%	10.48%	4247.65	10,000.00
2354	National Livestock Com. Co., a Corpn.	51,951.86	18%	17%	13.36%	3.39%	10.96%	1124.18	36,000.00
2355	Bryant Poole, D. L. Dempsey & James Rutherford, Partners doing business as Poole-Dempsey-Rutherford L. S. Com. Co.	8,623.74	6%	22%	13.62%	3.93%	6.38%	2065.10	12,500.00
2356	Harry Kennaley, d/b as Harry Kennaley Com. Co	5,044.28	2%*	23%	11.38%	.95%	8.64%	.....	10,000.00
2357	Ehrke-Martin L. S. Com. Co., a Corporation	7,580.08	5%*	23%	10.92%	3.97%	6.19%	1082.04	8,200.00
2358	John Clay, F. H. Connor, Alan F. Wilson & Chas. G. Smith, Partners d/b as John Clay & Company	53,222.32	18%	8%	16.36%	4.31%	13.33%	None	10,000.00
2359	Ralph W. Wright & Wm. N. Baucus, Partners, d/b as Wright & Baucus Livestock Com. Co.	23,480.77	5%	14%	12.93%	4.42%	2.20%	2222.53	13,500.00
2360	Swift & Henry Livestock Com. Co., a Corpn.	51,577.18	14%	14%	13.93%	2.91%	12.98%	None	41,800.00
2361	L. Knop, Henry F. Theis, F. W. Theis, and A. C. Theis, Partners d/b as H. Theis & Sons	14,024.77	8%	17%	13.96%	.06%	10.48%	624.19	16,500.00
2362	Ham Knighton, d/b as Ham Knighton L. S. Com. Co.	3,188.17	19%	11%*	10.11%	.82%	5.38%	382.78	3,200.00
2363	J. M. Laird and G. T. Laird, Partners d/b as Laird Brothers	11,914.24	50%*	12%	14.52%*	.57%	7.67%	None	9,000.00

2345	Stagner, Pieronnet & Willis L. S. Com. Co., a Corpn.	9,535.85	1%	6%	13.47%	1.16%	9.49%	27.59	10,400.00
2346	Geo. S. Tamblyn, d/b as Tamblyn Com. Co.	5,950.72	..%	..	14.49%	.55%	6.69%	1240.58	8,500.00
2347	Henry F. Carnes, d/b as H. F. Carnes L. S. Com. Co.	1,570.66	24%	19%*	15.89%	2.96%	2.34%	403.88	1,500.00
2348	Warren Cummings, d/b as Warren Cummings L. S. Com. Co.	12,082.91	6%	16%	11.71%	5.94%	8.44%	1564.32	6,000.00
2349	Drumm-Standish Com. Co., a Corpn.	27,682.12	52%*	28%	15.04%	1.22%	10.56%	None	29,500.00
2350	Link Fasken, d/b as Link Fasken L. S. Com. Co.	480.03	..%	..%	11.66%	.....%	5.26%	402.50	750.00
2351	H. E. Long, Robt. B. Perry, and B. W. Perry, Partners d/b as Long-Perry Livestock Com. Co.	11,043.17	6%	14%	18.07%	2.23%	7.59%	2102.73	14,000.00
2352	L. E. Tice, d/b as Knight & Tice Sheep Com. Co.	3,947.78	14%	31%	.....%	.....%	11.06%	2860.39	5,000.00
2353	Chas. F. Vieregg & Robt. H. Stover, Partners, d/b as W. M. Leitch Sheep Com. Co.	2,162.76	13%	11%	.....%	.....%	10.48%	4247.65	10,000.00
2354	National Livestock Com. Co., a Corpn.	51,951.86	18%	17%	13.36%	3.39%	10.96%	1124.18	36,000.00
2355	Bryant Poole, D. L. Dempsey & James Rutherford, Partners doing business as Poole-Dempsey-Rutherford L. S. Com. Co.	8,623.74	6%	22%	13.62%	3.93%	6.38%	2065.10	12,500.00
2356	Harry Kennaley, d/b as Harry Kennaley Com. Co.	5,044.28	2%*	23%	11.38%	.95%	8.64%	.....	10,000.00
2357	Ehrke-Martin L. S. Com. Co., a Corporation	7,580.08	5%*	23%	10.92%	3.97%	6.19%	1082.04	8,200.00
2358	John Clay, F. H. Connor, Alan F. Wilson & Chas. G. Smith, Partners d/b as John Clay & Company	53,222.32	18%	8%	16.36%	4.31%	13.33%	None	10,000.00
2359	Ralph W. Wright & Wm. N. Baucus, Partners, d/b as Wright & Baucus Livestock Com. Co.	23,480.77	5%	14%	12.93%	4.42%	2.20%	2222.53	13,500.00
2360	Swift & Henry Livestock Com. Co., a Corpn.	51,577.18	14%	14%	13.93%	2.91%	12.98%	None	41,800.00
2361	L. Knop, Henry F. Theis, F. W. Theis, and A. C. Theis, Partners d/b as H. Theis & Sons	14,024.77	8%	17%	13.96%	.06%	10.48%	624.19	16,500.00
2362	Ham Knighton, d/b as Ham Knighton L. S. Com. Co.	3,188.17	19%	11%*	10.11%	.82%	5.38%	382.78	3,200.00
2363	J. M. Laird and G. T. Laird, Partners d/b as Laird Brothers Livestock Com. Co.	11,214.34	50%*	13%	14.52%*	.57%	7.67%	None	9,000.00
2364	Martin, Blonquist & Lee Com. Co., a Corpn.	65,826.05	21%	7%	15.33%	6.33%	9.07%	None	42,200.00
2365	H. M. Baker, W. C. Bradshaw, Barney Metz and Louise M. Moffett, Partners d/b as Moffett Livestock Com. Co.	13,554.95	3%*	16%	13.24%	7.80%	11.61%	None	11,000.00
2366	Jay D. McCormick, d/b as Jay D. McCormick L. S. Com. Co.	1,965.08	17%	5%*	12.76%	.82%	9.26%	970.18	2,000.00
2367	W. C. Kile, d/b as Kile Com. Co.	10,862.15	20%	7%	13.25%	4.11%	10.75%	None	6,000.00
2368	Ryan-Robinson Com. Co., a Corpn.	24,414.25	0	9%	14.04%	5.28%	9.50%	None	18,050.00
2369	Ben L. Welsh, d/b as Welsh Livestock Com. Co.	1,577.38	10%	..%	15.79%	4%	6.45%	225.01	1,500.00
2370	Witherspoon Livestock Com. Co., a Corpn.	2,756.36	14%	19%	16.63%	11.41%	9.62%	None	19,283.50
2371	W. E. Curtis, d/b as W. E. Curtis & Company	8,909.64	29%	4%*	15.07%	1.55%	9.84%	None	6,000.00
2372	Norman B. Greer, d/b as Greer & Company	3,498.28	10%	21%	11.93%	3.97%	10.49%	1443.47	3,500.00
2373	Inman-Hutton Livestock Com. Co., a Corpn.	9,023.35	38%	33%	14.33%	5.21%	7.62%	1192.58	11,000.00
2374	Walter G. Land & John E. Maze, Partners, d/b as Walter G. Land Livestock Com. Co.	6,241.89	5%	26%	13.51%	8.73%	8.05%	None	3,000.00
2375	Less White, d/b as Less White Livestock Com. Co.	3,906.86	12%*	3%	13.11%	3.12%	9.58%	714.95	4,000.00
2376	Wilson Egan & Co., a Corporation	28,725.01	10%	23%	16.14%	4.36%	6.28%	20.22	26,000.00
2377	Burlington Livestock Com. Co., a Corpn.	45,631.05	51%	25%	15.50%	3.65%	7.33%	4080.74	24,083.55
2378	Cassidy Southwestern Com. Co., a Corpn.	20,579.93	..%	..%	13.81%	2.39%	11.46%	948.31	16,000.00

LEGEND

(1) The figures in this column are alleged in the petition to represent the amount by which the gross revenue which would have been received by petitioner in the year 1931 if the Schedule of Rates and Charges prescribed by the Order had been in force and effect would have been less than the total calculable costs incurred by petitioner in the rendition of stockyard services (Res. Exh. 207).

(2) Alleged to be the amount in percentage by which the gross yield to individual petitioner of charges actually collected in 1932 was less than the gross yield of charges collected in 1931.

(3) Alleged amount in percentage by which the gross revenue of petitioner was less for the first five months of 1933 than during the first five months of 1932.

(4) Alleged to represent in percentage the amount by which the Schedule of Rates and Charges ordered by the Secretary if applied to the business of individual petitioner would reduce revenues in respect to cattle and calves.

(5) Alleged to be the amount in percentage by which the Schedule of Rates and Charges ordered by the Secretary if applied to the business of petitioner would reduce revenues in respect to hogs.

(6) Alleged to be representative in percentage of amount by which the Schedule of Rates and Charges ordered by the Secretary if applied to the business of the individual petitioner would reduce revenues in respect to sheep.

(7) Alleged to represent the total compensation for personal services rendered by the owners of petitioner agency if the rates and charges ordered by the Secretary had been in effect in 1931 and petitioner incurred costs exclusive of any compensation to owners for personal service, as found by Government's Chief Accountant in Cost Study introduced in evidence (Ex. 115).

(8) Alleged to be representative of the reasonable value of the personal services rendered by the owner or owners of petitioner agency as shown by evidence submitted in behalf of the appellants. The number of owners in respect to each agency is set out in the evidence and in the individual petitions and the amount given includes all owners actually employed in the rendition of the service in connection with the operations of the individual petitioner in the year 1931.

(*) Indicates gain instead of loss.

December 13, 1935

Identified and approved as Item 2 of Stipulated Præcipe for record on appeal in Morgan, et al. v, United States of America, et al., in Equity No. 2328,

John B. Gage,
Attorneys for Appellants.

Wendell Berge,
Attorneys for Appellees.

[fol. 150] IN UNITED STATES DISTRICT COURT

TEMPORARY RESTRAINING ORDER—Filed July 22, 1933

Now on this 22nd day of July, 1933, comes the petitioner as plaintiff herein, and presents to the undersigned Judges of this Court a verified petition wherein it is prayed that an order staying and suspending the enforcement, operation and execution of the Order of June 14, 1933, of the defendant Secretary of Agriculture issue against the defendants, and each of them, as in said petition prayed.

And the Court, being duly advised in the premises, finds that notice of application for such Restraining Order has been duly given to the defendants in accordance with law and that immediate and irreparable injury and damage will result to petitioner unless such Order shall issue according to the prayer of the Petition, and that petitioner is entitled to a temporary restraining of Stay Order as prayed, in this:

That petitioner has an established business as a market agency, registered under the Packers and Stockyards Act, 1921, engaged in the sale and purchase of livestock for others at the Kansas City Stock Yards, in Kansas City, Missouri, and that if such temporary restraining and stay order suspending the enforcement of said Order of the Secretary of Agriculture is not granted, the defendants will, before the hearing upon the application for temporary injunction as prayed in said Petition, have it within their power, and they will, proceed to enforce the penalties provided for violation of said Order by the Packers and [fol. 151] Stockyards Act, 1921, and will institute a multiplicity of suits against the petitioner on each of the grounds of supposed violation aforesaid and otherwise proceed in derogation of the right of the petitioner to collect rates and charges for stockyard services rendered under the Schedule of Rates and Charges or tariffs now on file by petitioner with the Secretary of Agriculture, and that upon compliance with said Order the petitioner would be unable to collect from the users of its service the differences between the rates fixed by the said Order of the Secretary and the rates prescribed in the Schedule of Rates and Charges now on file with the Secretary of Agriculture. In the event the relief in said petition prayed was finally granted by this Court, the amounts which petitioner alleges

it is legally entitled to receive according to such established and filed rates and charges would be wholly lost to the petitioner, causing it loss from day to day in the State of Missouri, and plaintiff would be irreparably deprived thereof in violation of the Fifth Amendment of the Constitution of the United States.

Now, therefore, it is by this Court ordered that the defendant Henry A. Wallace, Secretary of Agriculture, and each and all of the officers, attorneys, solicitors, agents and representatives of the United States, and all other persons acting or claiming, or assuming to act, for and under authority of the defendants, or either of them, and all other persons who now seek or attempt, or shall hereafter seek or attempt, to interfere with or abridge the right of the plaintiff or do any act in any wise militating against the right of the plaintiff to collect, demand, receive and retain rates and charges for stockyard services at the Kansas [fol. 152] City Stock Yards in accordance with the Schedule of Rates and Charges of petitioner now on file with the Secretary of Agriculture be, and they are hereby, restrained and enjoined from instituting, prosecuting, or aiding in instituting or prosecuting, any proceeding or action for penalties, fines or imprisonment against the petitioner or its agents because of failure to comply with said Order of the Secretary of Agriculture of June 14, 1933, and the enforcement, operation and execution of said Order, and each and every part thereof, by the defendants or any persons acting or claiming, or assuming to act, for or under the authority of defendants, is hereby stayed and suspended for 60 days from the date of this Order, or until further order of this Court.

Provided, however, that the petitioner shall deposit with the Clerk of this Court on Monday of each and every week hereafter while this order, or any extension thereof, may remain in force and effect and pending final disposition of this cause, the full amount by which the charges collected under the Schedule of Rates in effect exceeds the amount which would have been collected under the rates prescribed in the Order of the Secretary, together with a verified statement of the names and addresses of all persons upon whose behalf such amounts are collected by petitioner.

Arba S. Van Valkenburgh, Albert L. Reeves, Merrill E. Otis, Judges.

[fol. 153] The Clerk is directed to enter the above order of record, and to enter an identical order in Cases Numbered 2329 to 2378, both inclusive, In Equity, in this Court, making the identical order in each of said cases.

Dated this 22nd day of July, 1933.

Arba S. Van Valkenburgh, Albert L. Reeves, Merrill E. Otis, Judges.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION TO STRIKE PORTIONS OF PETITION—Filed Sept. 5, 1933

Come now the defendants in the above-entitled cause and move that an order be entered herein requiring that the following portions of the petition be stricken for the reasons hereinafter stated:

1. All of Section IV of said petition;

2. All of Sub-section (a) of Section V of said petition;

3. The first two paragraphs of Sub-section (b) of Section V of said petition;

4. The last 15 lines of Sub-section (d) of Section V of said petition, commencing with the words "The undisputed [fol. 154] testimony shows" in the middle of page 11 of said petition;

5. All of Section VI of said petition;

6. All of Sub-section (a) of Section VII of said petition;

7. The last 11 lines of Sub-section (b) of Section VII of said petition, commencing with the words, "The statement contained" in the middle of page 19 of said petition;

8. All of Sub-section (c) of Section VII of said petition;

9. The last 5 lines of Sub-section (d) of Section VII of said petition, commencing with the words, "As to the 59 respondents" just below the middle of page 20 of said petition;

10. All of Sub-section (f) of Section VII of said petition;

11. All of Sub-section (a), (b), and (c) of Section VIII of said petition;

12. The last 16 lines of Sub-section (d) of Section VIII of said petition, commencing with the words, "on page 39" in the middle of page 24 of said petition;

13. All of Sub-section (e) of Section VIII of said petition;

14. All of Section IX of said petition;

for the reason that the allegations contained in said portions of said petition are impertinent, redundant, incompetent, irrelevant and immaterial to any issue which may properly be raised in this suit, and the defendants ought not to be required to answer the same.

[fol. 155] Wherefore, the defendants pray that said portions of said petition be stricken therefrom, and that an order be entered accordingly.

Harold M. Stephens, Assistant Attorney General. Wendell Berge, Special Assistant to the Attorney General. William L. Vandeventer, United States Attorney. Seth Thomas, Solicitor of the Department of Agriculture. J. S. Bohannan, Attorney, Department of Agriculture.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTIONS TO STRIKE—Filed Sept. 9, 1933.

On August 25, 1933, the following stipulation was entered into by the parties in the above entitled case and cases 2329 to 2378, inclusive:

"Stipulation

It is hereby stipulated and agreed by and between the parties to the above-entitled cause and the similar pending

causes numbered 2329-2378, inclusive, that the defendants shall have until September 9, 1933, for filing their answers.

Dated this 25th day of August, 1933.

(Signed) John B. Gage, Solicitor for Petitioners. Wendell Berge, Special Assistant to the Attorney General."

[fol. 156] Pursuant to this stipulation the Court, on August 25, 1933, entered an order as follows:

"Order

It is hereby Ordered that defendants shall have until September 9, 1933, to file their answers in the above cause.

The Clerk is directed to enter the above order of record and to enter an identical order in cases numbered 2329 to 2378, inclusive, in Equity, in this Court making an identical order in each of said cases.

Dated this 25th day of August, 1933.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge."

Notwithstanding the foregoing stipulation and order, the defendants, on the 5th day of September, 1933, filed in each of the cases referred to in the stipulation and order a motion to strike.

After conference and due consideration, the Court is of the opinion that the questions raised by the motions to strike should be taken with the cases and that the defendants should file answers in accordance with the stipulation. The motions to strike, therefore, will be overruled without prejudice to the later presentation of the questions raised in the motions.

Order

The motions to strike the bills in equity in the above entitled case and in cases numbers 2329 to 2378, inclusive, [fol. 157] are overruled. It is so ordered.

It is further ordered that the defendants have until September 19, 1933, within which to file answers in all of said cases.

Dated this 9th day of September, 1933.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER SETTING ASIDE ORDER OVERRULING MOTIONS TO STRIKE, ETC.—Filed Sept. 13, 1933

On the motion of defendants and for good cause shown, the order of September 9, 1933, in case No. 2328 and cases 2329 to 2378, inclusive, wherein defendant's motions to strike certain portions of the petitions in said cases was overruled, is set aside. It is so ordered.

It is further ordered that defendants' motions to strike be and they are set down for oral argument on Friday, September 29, 1933.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

[fol. 158] IN UNITED STATES DISTRICT COURT

ORDER CONTINUING IN FORCE TEMPORARY RESTRAINING ORDER HERETOFORE GRANTED—Filed Sept. 19, 1933

Now on this 19th day of September, 1933, comes the petitioner as plaintiff herein, and it appearing that the hearing upon the application for a temporary injunction herein has been continued, and that the time allowed by law for the filing of answer herein has been extended by the Court at the request of the defendants;

And the Court being duly advised in the premises, finds that immediate and irreparable injury and damage will result to petitioner unless the temporary restraining order hereinbefore issued is extended and continued in force and effect,

Now therefore, it is by this Court Ordered that the temporary restraining order herein issued be and hereby is continued in whole and in accordance with all the terms and conditions thereof in force and effect until decision by this Court upon the application for a temporary injunction as prayed for in the petition filed herein.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge.

The Clerk is directed to enter an identical order in Causes 2329 to 2378, both inclusive, in equity, by this Court, making the identical Order effective in each of said cases.

[fol. 159] Dated this 19th day of September, 1933.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ON DEFENDANTS' MOTION TO STRIKE PORTIONS OF PETITIONS—Filed Oct. 27, 1933

The motions of the defendants to strike certain portions of the petitions in these cases, having been duly considered by the Court, and the Court being fully advised in the premises, are in part sustained and in part overruled, as follows:

Subdivision 1 of the motions to strike, directed at all of Section IV in each of the petitions, and subdivision 14 of the motions to strike, being directed at all of Section IX in each of the petitions, are sustained.

All other subdivisions of the motions to strike are overruled.

In so far as the motions to strike are sustained, the petitioners are allowed exceptions. In so far as the motions to strike are overruled, the defendants are allowed exceptions.

Since Sections IV and IX in each of the petitions are wholly independent of all other parts of the petition and since, therefore, a recasting of the petitions is not made necessary by this order, petitioners are not required to file amended petitions. Defendants are allowed thirty days [fol. 160] within which to file answers to the petitions as modified by this order.

It is so ordered.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER—Filed Nov. 25, 1933

Come now the defendants in the above-entitled cause and companion cases, and make answer to the petitions hereinbefore filed as follows:

1. Defendants admit the allegations contained in Sections I to III of said petitions.

2. Answering Section V of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section V of said petitions and particularly subsection (a) thereof, defendants admit that the evidence shows that the diminution in the net moneys available to owners of petitioner market agencies in 1931, as compared with the net moneys available to such owners [fol. 161] in 1929, was due in part to a reduction of approximately 13% in gross revenues, and that petitioner market agencies did not reduce proportionately their operating costs, but defendants deny that such costs could not have been reduced. Defendants are without knowledge as to the amount of the selling and buying charges collected by petitioner market agencies during the year 1932 or during the first five months of the year 1933, but say that such matters are not relevant or material to the determination of these

cases and that proof thereof is not admissible before this Court.

(b) Further answering Section V of said petitions and particularly subsection (b) thereof, defendants admit that the Secretary found in his Order (Paragraphs 142 and 143) that it is reasonable to expect a good and experienced salesman of cattle and calves to sell 29,000 head of cattle and calves per year; such a salesman of hogs to sell 85,000 head of hogs per year; and such a salesman of sheep to sell 250,000 head of sheep per year. Defendants say that the above estimates of what constitutes a reasonable year's work for salesmen are below the estimates of those salesmen who testified, and that a considerable number of salesmen now employed by petitioner market agencies at Kansas City have attained and exceeded the standard of performance mentioned in the Order, notwithstanding the highly competitive and overmanned condition existing at the Kan- [fol. 162] sas City market. Defendants admit that the Secretary found that the conditions under which salesmanship is performed at the Kansas City market customarily include services incidental to the selling operation, and that these services include the maintenance of contacts with the owners of livestock prior to shipment, appraisal in the country, supervision enroute to market either while on pasture, in feed lots, or at railroad feeding stations, keeping informed as to changing market conditions, sorting and grading livestock at the market, consulting with owners of livestock at the market, or advising them of the result of sales if away from the market, together with other miscellaneous duties. Defendants further admit the allegation that the evidence at the hearing showed that livestock salesmen, unlike ordinary salesmen, determine the price for the commodity they sell.

(c) Further answering Section V of said petitions and particularly subsection (d) thereof, defendants admit that the costs classified as "Business-Getting and Maintaining Expenses" include amounts actually expended during the year 1931 by petitioner market agencies for traveling expenses incident to the appraisal of livestock before a sale, and supervising the feeding of livestock en route to market at feeding stations, advertising, the preparation, printing and posting of circulars and market reports sent to stock- [fol. 163] men; automobile maintenance and transportation;

and dues and assessments paid to the Kansas City Live Stock Exchange. Answering the allegation that during the period mentioned in the Order commission rates at the Chicago and St. Louis markets were substantially higher than those charged by petitioner market agencies, defendants say that such matters are not relevant or material to the determination of this case, and therefore require no answer. Answering the allegation that the undisputed evidence discloses the intensity of competitive efforts of packers and others to divert livestock from the Kansas City market, defendants admit that this is true only as to hogs.

3. Answering Section VI of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section VI of said petitions and particularly subsection (a) thereof, defendants deny that the Schedule of Rates and Charges first placed under inquiry was established after hearing and investigation by the then Secretary as a just, reasonable and nondiscriminatory schedule of rates and charges. Defendants say that such Schedule was determined in 1923 by an arbitration proceeding, that such proceeding was conducted upon the suggestion and agreement of the private parties thereto, and that the persons who served as arbiters therein were [fol. 164] chosen and agreed upon by said private parties and did not serve in any official capacity which they may have possessed under the Government of the United States but purely by virtue of their selection by agreement of the parties to said proceeding; that the then Secretary of Agriculture merely gave his approval to said plan of arbitration as a mode of compromise and settlement agreeable to the parties thereto. Defendants admit that the Schedule of Rates and Charges agreed upon at said arbitration in 1923 was higher by more than 10% than the rates and charges found to be unjust and unreasonable by the Secretary in this proceeding, and further admit that the rates and charges under inquiry expressed in percentage of net sales proceeds handled were less at the time of the hearing than 2% thereof and less than the charges for commission or brokerage service for selling other agricultural produce. Defendants further admit that during the period of the World War, and from 1913 to 1919, the rates charged by petitioner market agencies were increased by 10% and that

increases of approximately 200% occurred in the cost of living, farm wages, general hourly wages and livestock prices. But defendants say that none of the allegations in said subsection (a) is relevant or material to the determination of this case.

(b) Further answering Section VI of said petitions and particularly subsection (b) thereof, defendants admit that [fol. 165] the Secretary stated in Paragraph 129 of his Order that the Packers and Stockyards Act, 1921, does not clothe the Secretary with authority to determine how many agencies would be required to handle properly the business at the Kansas City Stockyards. Defendants say that none of the allegations contained in said subsection (b) is relevant or material to the determination of this case. . . .

(c) Further answering Section VI of said petitions and particularly subsection (d) thereof, defendants admit that the Secretary found (Paragraph 50 of the Order) that the demand for livestock at Kansas City, especially for hogs, is greater than that supplied by the livestock arriving at the public market and that a large number of hogs destined for local slaughter does not pass through the stockyards but is purchased directly by packers. Defendants admit that the market price determined at the public stockyards at Kansas City and elsewhere has much weight in determining the prices paid for livestock bought and sold at private stockyards, but say that such matters are not relevant or material to the determination of this case. The allegation that the packers acquire livestock off the public market without contributing proportionately to the cost of maintenance of the public market at Kansas City is likewise wholly irrelevant and immaterial to the validity of the Secretary's Order, and to this suit.

(d) Further answering Section VI of said petitions and [fol. 166] particularly subsection (e) thereof, defendants admit that the Order contains a finding of fact (Paragraph 19 of the Order) that livestock tends to move from producer to consumer by the most economical route.

4. Answering Section VII of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section VII of said petitions and particularly subsection (a) thereof, defendants admit that the costs and expenses recognized by the Government accountant included no expenses incident to interest paid, donations to Community Chests, reserve to meet uninsurable hazards, or allowance for profits, but defendants deny the inference that the Secretary was bound by the opinion of the Government accountant in these respects, and say that the Secretary made a proper allowance for interest, reserve to meet uninsurable hazards, and profits. Answering the allegation on page 17 of the petition to the effect that the separation of species costs into functional costs such as selling, yarding, office work, administration, business getting, etc., was arbitrary and not based on any natural segregations incident to the actual performance of these functions, defendants say that the business of petitioner market agencies naturally divides itself into such functional divisions; that such divisions were followed by the accountant who testified for petitioner market agencies; and that such functional division for the purpose of determining costs [fol. 167] is not affected by the fact that the same men commonly perform several different functions. Defendants further say that such separation of costs into functional costs is not arbitrary and that it does not vary from the facts of the business of petitioner market agencies. Defendants admit that the reasonable unit costs found by the Secretary are lower in most instances than those costs actually incurred by petitioner market agencies, and defendants say that the purpose of the inquiry was not to construct a rate order based upon costs actually incurred in maintaining an overly-competitive market, but rather to determine what costs are reasonable. Defendants further say that the Order of the Secretary is not to be tested by whether it allows costs actually incurred but rather by whether the costs allowed in the Order are in themselves reasonable to the shippers of livestock and to the market agencies.

(b) Further answering Section VII of said petitions and particularly subsection (b) thereof, defendants say that the Order in Paragraphs 159 to 163 allows reasonable per head costs to cover compensation for management. Defendants admit that in Paragraph 159 of the Order the cost of management of the two cooperative market agencies on the Kansas City Stockyard is taken into account in determining fair management costs.

(c) Further answering Section VII of said petitions and particularly subsection (c) thereof, defendants admit that [fol. 168] the Order does not allow as an element and part of the capital of petitioners any amount for going concern value. Defendants further admit that the Order holds that a rate of return of 6% on fixed capital and 7% on working capital used by petitioner is reasonable, and that the Order allows that amount only in calculating the gross return recognized and covered into the rates and charges established.

(d) Further answering Section VII of said petitions and particularly subsection (e) thereof, defendants admit that the Secretary disallowed as elements of reasonable cost, and did not cover into the rates and charges prescribed, moneys expended for donations to the Community Chests maintained by the Chambers of Commerce in Kansas City, Missouri, and Kansas City, Kansas.

(e) Further answering Section VII of said petitions and particularly subsection (f) thereof, defendants admit that the effect of the Schedule of Rates and Charges is to permit increases in rates to dealers registered under the Packers and Stockyards Act, 1921, and to permit increases in rates and charges for buying livestock.

5. Answering Section VIII of said petitions, defendants deny each and every allegation contained therein, except as hereinafter otherwise expressly admitted.

(a) Further answering Section VIII of said petitions and particularly subsection (a) thereof, defendants deny [fol. 169] on information and belief the allegation therein contained to the effect that if the prescribed Schedule of Rates and Charges had been in force in 1931 each petitioner would have received an amount, stated in each petition, less than the total calculable costs incurred by each such petitioner in the rendition of stockyards services that year.

Defendants are without knowledge as to the truth of the allegations that the gross yield to each petitioner of the rates and charges collected was less in 1932 by a stated percentage than the revenue received in 1931, and that the gross yield for the first five months of 1933 was less by a stated percentage than that for the first five months of 1932, and also the allegation of the percentage of further

reduction which the application of the prescribed rates and charges would cause each petitioner as to each species handled, but defendants say that such matters are irrelevant and immaterial to the determination of this case, and that proof thereof is not admissible before this Court.

Further answering said subsection (a), defendants say that none of the facts alleged therein is relevant or material to the validity of the Secretary's Order, or to this suit, and that the lawfulness of the rates and charges prescribed in said Order is not to be determined by whether or not each petitioner could earn a sufficient amount thereunder to cover costs as high as those heretofore incurred.

(b) Further answering Section VIII of said petitions [fol. 170] and particularly subsection (b) thereof, defendants say that the accountant who testified for the Secretary did not in his cost study set forth the total costs of operation of petitioners for the purpose of showing what were reasonable costs, but he merely testified as to the amount of such costs as he found them. Defendants say that it is irrelevant and immaterial to the validity of the Secretary's Order and to this suit whether or not the gross yield of rates and charges prescribed in the Order, if applied in 1931, would have been less than the cost of operation of the business of any one petitioner during that year. Further answering said subsection (b), and particularly lines six to twenty-three, inclusive, thereof, defendants are without knowledge as to the truth of the allegations therein contained and they therefore deny on information and belief each and every such allegation.

(c) Further answering Section VIII of said petitions and particularly subsection (d) thereof, defendants admit that on page 39 the Order shows that 11 firms handled more than 50% of the total market volume of livestock at the Kansas City Stockyards in 1931, and that 23 firms handled over 75% of the total market volume. Defendants deny the allegation that the Order bases the rates and charges prescribed therein upon the assumption that the firms doing the largest relative volume of business operated their businesses more economically and efficiently than other firms doing a lesser volume of business. Defendants deny upon [fol. 171] information and belief all of the other allegations of said subsection (d).

(d) Further answering Section VIII of said petitions and particularly subsection (e) thereof, defendants are without knowledge as to the truth of the allegation therein contained, but say that such matter is not relevant or material to the determination of this case, and that proof thereof is not admissible before this Court.

6. Except as herein otherwise expressly admitted, defendants deny the truth of each and all of the allegations contained in said petitions.

Wherefore, having fully answered, defendants pray that the petitions be dismissed at the cost of the petitioners and for the benefit of such other order or orders as the Court may deem appropriate.

Harold M. Stephens, Assistant Attorney General. Wendell Berge, Special Assistant to the Attorney General. William L. Vandeventer, United States Attorney. Seth Thomas, Solicitor, Department of Agriculture. J. S. Bohannan, Attorney, Department of Agriculture. G. N. Dagger, Attorney, Department of Agriculture.

[File endorsement omitted.]

[fol. 172] IN UNITED STATES DISTRICT COURT

Before Van Valkenburgh, Circuit Judge, and Reeves and Otis, District Judges

OPINION OF THE COURT—Filed Oct. 29, 1934

OTIS, District Judge, delivered the opinion of the Court:

These are fifty-nine cases in equity contemporaneously initiated in this Court, submitted together and now for decision after final hearing. The prayer of the petition in each case is for injunctive relief against the enforcement of a certain order of the Secretary of Agriculture, dated June 14, 1933, fixing maximum rates and charges for stockyard services rendered by the petitioners at the Kansas City Stockyards in Kansas City, Missouri.

The business of each of the petitioners is that of a live-stock selling and buying (or marketing) agency. It is a business affected with a public interest whose rates and charges for services rendered by it to its patrons are subject to governmental regulation. Since the business of each of the petitioners directly affects commerce among the several states Congress is authorized by the Constitution to legislate touching such rates and charges. Congress has done that in the so-called Packers and Stockyards Act (42 Stat. L. 163), providing in that Act that such rates and charges shall be such only as are reasonable and delegating to the Secretary of Agriculture the function and power of determining what rates and charges are reasonable. The validity of this legislation has been determined by the Su- [fol. 173] preme Court (Tagg Bros. v. United States, 280 U. S. 420) and is not questioned in these cases.

The Packers and Stockyards Act provides that—

Sec. 310. Whenever after full hearing upon a complaint made as provided in Section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, to be charged and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed.

Pursuant to the provisions of the Act the Secretary of Agriculture on his own initiative on April 7, 1930, ordered an inquiry into the reasonableness of the rates and charges of the petitioners for stockyard services rendered by them. A hearing followed before an examiner designated for that purpose. Testimony was taken by him which fills 6721 type-[fol. 174] written pages in addition to which 159 exhibits were offered in evidence. Followed an oral argument before an "Acting Secretary of Agriculture." Thereafter, on May 18, 1932, the Secretary of Agriculture issued an order fixing the maximum rates and charges. A petition for rehearing was granted July 15, 1932. At the rehearing conducted by an examiner testimony was taken which fills 3091 typewritten pages in addition to which 111 exhibits were offered in evidence. Followed a second oral argument before an "Acting Secretary of Agriculture." Thereafter, on June 14, 1933, the Secretary of Agriculture made and issued findings of facts and the order based thereon fixing rates and charges which is now attacked. A petition for a rehearing as to this order was denied.

The rates and charges of petitioners which were in effect on June 13, 1933, and which the Secretary held were unreasonable were in the form of a fixed charge per head of livestock bought or sold, the charge varying with the kind of livestock and with the number of animals involved in any transaction. Thus, for selling calves the charge was thirty cents per head for a consignment of from 1 to 20 head and twenty-five cents per head for all over 20 head. The maximum charges ordered by the Secretary were in the same form. For illustration, the Secretary's order required that the maximum selling charge as to calves should be: thirty-five cents per head in a consignment of one head, twenty cents a head in a consignment of from 1 to 40 head, five cents per head for all over 40 head.

We preface with this brief preliminary statement our [fol. 175] consideration of the issues.

In so far as the subject yet has been developed in judicial opinions there are possible only five attacks on such an order as that with which we are here concerned and the petitioners have made all of them save one. They are: (1) that the statutory procedure was not followed; (2) that the findings do not support the order; (3) that the findings are not supported by the evidence; (4) that erroneous rules

of law were followed to reach the findings; (5) that the rates and charges fixed in the order are confiscatory and so violative of constitutional rights. Tagg Bros. v. United States, supra; Interstate Commerce Commission v. Illinois Central R. Co., 215 U. S. 452, 454.

The Procedure

1. Before the Secretary lawfully can make an order of this character he must accord a "full hearing to the interested parties." Sec. 310 of the Act. In the petitions it was alleged that a full hearing was denied in that: (1) each and every of the petitioners was denied a separate hearing; (2) that the Secretary of Agriculture in person did not hear arguments on the evidence but without authority in law delegated that duty to assistant secretaries designated as Acting Secretaries; and (3) that the Secretary signed the order without reading the evidence. On a preliminary hearing we sustained a motion to strike these allegations from the petitions. We think it is unnecessary now to elab- [fol. 176] orate the obvious observation that the theory of these allegations is supported by nothing in the Act and that a construction of the Act consistent with that theory would destroy it altogether as a measure capable of practical administration.

Findings Support Order

2. The Secretary made 162 findings of fact upon the evidence heard at the original hearing and at the rehearing. No contention is made but that these findings support the order. Unquestionably they do support the order and that fully.

Findings Supported by Evidence

3. The business of a livestock agency is of a personal service character requiring little invested capital. To arrive at what are reasonable rates and charges for the services rendered by such an agency at a given place, as at the Kansas City Stockyards in Kansas City, Missouri, the following factors must be considered: (1) the total volume of business to be transacted; (2) the number of men required for the efficient handling of that business; (3) the reasonable cost of handling the business, including reasonable

compensation of the men necessarily employed and other necessary and proper costs; (4) the capital investment required for the efficient handling of the volume of business reasonably to be expected; (5) what is a proper return on the capital so invested; (6) what is a reasonable compensation for management and a reasonable profit. The findings made by the Secretary included all of these factors [fol. 177] and every other conceivable factor necessary to be considered. Some of the findings are challenged as contrary to the evidence.

Save possibly where the issue of confiscation is for determination the settled rule is that the findings of the Secretary in a proceeding of this character "must be accepted by the court as conclusive, if the evidence before him was legally sufficient to maintain them." Tagg Bros. v. United States, et al., 280 U. S. 420, 444. The court is not concerned with the weight of the evidence, with whether its judgment concurs with that of the Secretary, but only with the question: is any finding essential to the order under review unsupported by any substantial evidence?

With this rule in mind we have gone to the record, with the aid of briefs submitted, and have found therein substantial testimony to support every challenged finding, nor do we find any justification for the contention of petitioners that in arriving at his findings material and relevant evidence was ignored. The important and essential findings, such as, for example, how many hogs an efficient salesman should sell in a given time, what are reasonably compensatory salaries salesmen should receive, what costs are legitimate and what unnecessary, what wastes may be eliminated, indeed almost every finding that was made except those which were merely statistical, clearly depend upon the application to the testimony of the judgment of him charged with the duty of making findings. That duty the law imposes on the Secretary. We cannot overturn his judgment as to such matters when there is evidence to support his findings.

[fol. 178] Claimed Errors of Law

It is true that such an order as the one here attacked must be set aside if it rests upon an erroneous rule of law. Tagg Bros. v. United States, 280 U. S. 420, 442. The petitioners assert the applicability of this principle to these

cases, but just what erroneous rules of law the petitioners claim were applied by the Secretary we have had some difficulty in gathering from the petitions and briefs notwithstanding the great labor able counsel for petitioners obviously have given to their preparation.

There is no contention that the subject matter sought to be regulated was not within the Secretary's jurisdiction under the statute and no allegation, therefore, of any such fundamental legal error as a misinterpretation of the statute would have been. The contentions, as best we can state them (they purport to be set out in Subdivision VII of each of the petitions), are the following:

A. The costs used by the Secretary were arrived at arbitrarily and in disregard of the facts. Clearly this is not a matter of applying an erroneous rule of law, but a matter of whether the evidence supports the findings.

B. The Secretary ruled rightly that the reasonable rates to be fixed should include a profit but erroneously that compensation allowed for management and the carrying of uninsurable risks included the element of profit whereas the cost of management and of carrying uninsurable risks are legitimate expenses and the petitioners are entitled to something additional as profits. The answer to the contention is that if it be conceded that it was error to rule that the [fol. 179] allowance for management and the cost of carrying uninsurable risks necessarily included all the profit to which an owner is entitled in truth the rates fixed had an additional spread, above all costs, including the two specified, which spread allows and provides for the alleged omission.

C. The Secretary rightly ruled that the petitioners were entitled to a return on capital investment, but erroneously excluded any allowances for going concern values. Such is the contention. The evidence whereon the contention is based is to the effect that the methods and practices used by the petitioners were worth (not what they had cost) $66,401. The contention is that a return should be allowed on that amount. The view of the Secretary was that while knowledge of these methods and practices was indispensable anyone is free to use them and they are not property. Such knowledge is a part of the necessary mental equipment of those rendering livestock selling and buying service. Compensation for the service includes full return for

the use of the knowledge of methods and practices. It is not an element of capital investment. We agree.

D. The Secretary erroneously excluded from consideration of costs various legitimate classes of expenses, such as insurance against normal risks. We find in the record no support for this contention.

E. Various other contentions are made in this connection which we think present no errors of law.

[fol. 180] Confiscation

Each of the petitioners claims that the order of the Secretary violates the due process clause of the Fifth Amendment in that it deprives him of his property without due process of law. Whether the presence in these cases of this issue of confiscation entitles the petitioners to the independent judgment of the court as to the law and the facts after a consideration of all of the testimony heard by the Secretary and also additional testimony offered before this Court, never has finally been decided by the Supreme Court. Tagg Bros. v. United States, 280 U. S. 420, 443. The view that those alleging confiscation are entitled to the independent judgment of the court is supported by such cases as Ohio Valley Water Works Company v. Ben Avon Borough, 253 U. S. 287, 289; Bluefield Water Works Company v. Public Service Commission, 262 U. S. 679, 689; Prendergast v. New York Tel. Co., 262 U. S. 43, 50; Lehigh Valley R. Co. v. Board of Public Utility Com., 278 U. S. 24, 36; United Railways & Electric Co. v. West, 289 U. S. 234, 251; Phillips v. Commissioner, 283 U. S. 589, 600. The view that even where the issue of confiscation is present, findings of fact made by the Secretary, if supported by substantial evidence, are conclusive, is supported by a consideration of the text of the Interstate Commerce Act to which the Packers and Stockyards Act refers and by United States v. Louisville and N. R. Co., 235 U. S. 314, 320; Interstate Commerce Commission v. Union Pac. R. Co., 222 U. S. 541, 547, and the dissenting opinion in Ohio Valley Water Works Co. v. Ben Avon Borough, 253 U. S. 287, 297, as well [fol. 181] as by the declination of the Supreme Court to pass upon the matter in Tagg Bros. v. United States, 280 U. S. 420, 443. Whichever of these views is the correct one, it is certain that there is a strong presumption in favor of

the findings made by the Secretary as well as those of any rate making body. Darnell v. Edwards, 244 U. S. 564.

If we proceed on the view that the findings of the Secretary are conclusive, if supported by any evidence, and we have determined that each of them is supported by substantial evidence, then the contentions of petitioners as to confiscation must be resolved against them with the exception of one of those contentions. All of the contentions, excepting one, are based upon the theory that the Secretary's findings as to costs are contrary to the weight of the evidence and that if correct findings were made the costs allowed in fixing rates and charges would be so much greater than those which were allowed as that it would conclusively appear that the rates and charges fixed in the Secretary's order did not adequately provide for costs and so are confiscatory. If, however, having decided that the findings of the Secretary are sustained by substantial evidence, we are bound by his findings, then we are bound also to conclude that the Secretary's order makes full allowance for all reasonable costs in the rates and charges fixed by the order. The one contention as to confiscation not thus disposed of is that the rate of return allowed by the Secretary's order on invested capital of petitioners, which is 6% on fixed capital and 7% on working capital, as a matter of law is confiscatory. We regard that contention as without merit.

[fol. 182] If we adopt the view that, having raised the issue of confiscation, the petitioners are entitled to the independent judgment of this court based upon all of the evidence which was before the Secretary, as well as the additional evidence offered at the trial of these cases. Only presuming that the findings of the Secretary are correct, the same conclusion touching this issue is reached by us. Such an examination of all of the testimony as reasonably can be made, in view of its immense volume, we have made, reaching the conclusion that the essential findings made by the Secretary not only are sustained by substantial evidence but are in accordance with the weight of the evidence. Since those findings are right as to costs and since the rates and charges fixed by the Secretary's order adequately provide for costs and for a return on invested capital and for profits as to all petitioners who have shown that their agencies are efficiently conducted, the issue of confiscation must be resolved against the petitioners.

Other Matters

Contentions of the petitioners which have not been referred to specifically in this opinion have received the consideration of the Court and are resolved against the petitioners.

Findings of Fact

In each of these cases we make findings of fact as follows:

[fol. 183] 1. The order of the Secretary of Agriculture, dated June 14, 1933, fixing maximum rates and charges for petitioners as livestock selling and buying (marketing) agencies in the Kansas City Stockyards, Kansas City, Missouri, was made after full hearings accorded the petitioners, and each of them, and upon findings of fact made by the Secretary based upon the evidence taken at the hearings.

2. The findings of fact made by the Secretary of Agriculture upon which the order of June 14, 1933, was based are supported by substantial evidence.

3. Upon an independent consideration of the evidence, including the additional evidence taken by the court at the trial of these cases, the Court adopts as its findings of fact the findings of fact made by the Secretary and by reference incorporates them herein.

Conclusions of Law

The Court concludes as matters of Law—

1. That the order of the Secretary of Agriculture, dated June 14, 1933, fixing maximum rates and charges for livestock buying and selling (marketing) agencies at the Kansas City Stockyards in Kansas City, Missouri, was made by the Secretary after a full hearing in all respects conforming with the requirements of the Packers and Stockyards Act.

2. That the order is fully supported by the findings of fact made by the Secretary and that those findings were based upon substantial evidence and are supported by the

weight of the evidence and are not based upon any erroneous rules of law.

3. That the maximum rates fixed by the Secretary in [fol. 184] the order are reasonable and that they do not take the property of petitioners, or any of them, without due process of law in violation of the terms and provisions of the Fifth Amendment to the Constitution of the United States.

Indicated Decree

Counsel for the defendants will prepare and submit to the Court for approval and entry in each of these cases a decree dismissing the plaintiff's bill and assessing the costs against the plaintiff.

[File endorsement omitted.]

In United States District Court

Before Van Valkenburgh, Circuit Judge, and Reeves and Otis, District Judges

Concurring Opinion—Filed Oct. 29, 1934

Van Valkenburgh, Circuit Judge, concurring:

I agree with the decision to dismiss the bills, but I feel impelled to add some additional views with respect to some features of the findings made by the Secretary of Agriculture in reaching the conclusions leading to his order.

The reason, or at least the main reason, for the difference between petitioners and Secretary, lies in the matter of cost allowances and reasonable return to owners of the business. As stated by counsel for the Secretary, the substantive questions are:

[fol. 185] 1. Are the Secretary's findings of reasonable costs plus reasonable profits supported by the evidence?

2. Will the prescribed rate schedule produce sufficient revenue to cover the reasonable costs plus reasonable profits as found by the Secretary?

I think we may regard the entire controversy as resolved by an answer to the first of these questions, because the second is practically conceded, the insistence being that the Secretary's allowance of costs is unreasonable and, therefore, that the resulting profits are so unreasonable as to amount to confiscation.

To my mind, basing the allowance of salaries upon the potential ability of a salesman to sell a given number of car-loads in a year is too restrictive. Such ability is not subject to bare mathematical measure. One even casually familiar with stockyard operations knows that an efficient salesman must be a man of sound judgment and experience. His duties in fostering the business of the producer, in causing his product to be reared and brought to sale under favorable market conditions, are of great value and are not subject to mathematical percentage measurement. The stock does not come in such regular periods as to permit a fixed amount of sales, ratably distributed over the market year. When it does come it must be attended to by expert and experienced men to the best advantage of the grower. It is evident, therefore, that an organization must be kept sufficient to handle the business as it is presented. Such employees must be permanent for this purpose. Capable [fol. 186] men cannot be picked up at will. They must have a steady job, and at a wage that will reasonably compensate for the experience they bring and the service they perform. In this period, when it is emphasized that labor must receive a fitting reward, it will not do to visit upon the stockyards agencies, which are recognized as necessary to the commerce, too great a burden because of depression in the stock business. In their zeal to aid the stock raiser, government agencies must not forget the men who are essential to the making of his market. This applies in a lesser degree perhaps to yardmen and others employed in the business. It is to be emphasized that, if a market agency is to do business at all, it must have and maintain an organization sufficient to handle its business when it comes. An examination of record and briefs indicates that in various ways the agencies have striven to keep costs down. Obviously it was to their interest to do so in years lean at the best. Their judgment as to their necessities should not be lightly set aside nor underestimated.

So with respect to getting and maintaining business.

Certainly a considerable amount of advertising, circularizing, and personal contact is proper and necessary to keep this market prominently before the raisers and shippers of stock in this normal trade territory. The market agencies have to compete with other stock markets, with cooperatives, a percentage of whose profits go back to their members, with packers, and railroad yards, and with direct buyers generally. The fact that there may incidentally [fol. 187] result competition between the agencies themselves is no sufficient ground for reducing the costs of such activities to an extremely narrow compass. Also, if such agencies are to continue, the owners, as they are termed, must be allowed to receive a return commensurate with the contribution they make to the success of this market and the risks they assume.

I do not undertake to decide that the costs demanded by petitioners may not in some degree be excessive. Of course, even the most valuable operators cannot expect to make as much out of a small volume of business as out of one much larger; but they must be prepared for any reasonable eventuality, and the return fixed must not be so low as to drive too many of these agencies out of business, to the great injury of this stock-market, and, necessarily, to the shippers of stock, who would most conveniently patronize it. What the future volume of business may be is, of course, speculative, and should not be a controlling rate-making factor. The evidence is that the volume is decreasing during the periods under test. It appears that the order of the Secretary would reduce the number of men employed in handling the 1931 market from 188 to about 79. There were only fifty-nine firms originally petitioning. Nine are said to have retired from business, and, from the evidence before us, a number of others will necessarily follow.

It is true that no reasonable rate can be expected to protect all who may elect to engage in this quasi-public business, without regard to prevailing conditions; but the [fol. 188] protection of the market against lowering an irreducible minimum is as necessary to the public interests as it is to that of the stock shippers themselves.

My reaction to the presentation made is that I should have made a more liberal allowance for costs and owner return—not necessarily as great as that demanded by peti-

tioners, and, of course, with due regard to the number of owners accredited to each firm. Five owners in the same firm cannot each expect to receive the maximum accredited or appraised to one. But it is to be observed that the Secretary has given consideration to all the elements essential to the computation of a general rate of this nature. By the statute he is given almost dictatorial power in the establishment of such rates, provided he gives due consideration to all the elements involved, does not depart from any rule of law, and provided, further, the rates established are not clearly unreasonable and confiscatory.

Just what would be the result of applying those rates to future business upon a reasonable cost basis, or as found by the Secretary, cannot be known, because it has not yet been tried. We cannot bring to the complex conditions involved the same expert judgment as is employed by what the Supreme Court has described as "a tribunal appointed by law and informed by experience." And we are forbidden to question the soundness of the reasoning, or the wisdom of the conclusions reached, and to substitute our judgment for that of the findings and conclusions announced. I think the attack of petitioners is directed, in its last analysis, to the soundness of the conclusions reached, and I fear that we have no power to disturb them upon the showing made. Renewed application to Secretary or Court may [fol. 189] bring relief if reasonable experience, based upon the conditions imposed by the Secretary's order, is found to justify it. In this view I concur in the decision to dismiss the bills.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

DECREE—Filed Dec. 20, 1934

This cause came on for final hearing on the petition herein praying for a decree enjoining and restraining the defendants from enforcing an Order of the Secretary of Agriculture, dated June 14, 1933, in a proceeding pending before the Secretary of Agriculture known as "Secretary of Agriculture v. L. B. Andrews, et al., Docket No. 311",

which Order prescribed the maximum rates and charges for stockyard services rendered by petitioner and other market agencies doing business at the Kansas City Stockyards in Kansas City, Missouri. The record made at the hearings before the Secretary was received in evidence by this Court, and some additional evidence was presented by petitioner, oral arguments were made, briefs were filed and the case was fully submitted to this Court by counsel for both parties.

In accordance with the views heretofore expressed in Opinion of this Court, it is hereby

Ordered, adjudged and decreed that the petition hereinbefore filed by the petitioner be, and the same is, hereby dismissed at petitioner's cost, and that the temporary re- [fol. 190] straining order heretofore granted be, and the same is, hereby dissolved and set aside.

It is further ordered that petitioner shall, within sixty days from the date hereof, refund to the users of petitioner's services that portion of the rates and charges collected by petitioner since the 24th day of July, 1933, which is in excess of the maximum rates and charges prescribed as reasonable in the Order of the Secretary of Agriculture, dated June 14, 1933, which excess amounts have been deposited with the Clerk of this Court each week during the period since the temporary restraining order was granted, and that petitioner shall as soon as possible after the expiration of sixty days from the date of this Order file with this Court under oath a true and accurate account of the amounts so refunded, together with the names and addresses of the persons to whom refunds have been made, and also the names and addresses of persons to whom refunds are due but to whom payment has not been made, and the reasons therefor, together with a sworn statement to the effect that such account covers all the refunds which petitioner is obligated to make under the terms of this order.

Exceptions are allowed petitioner to the findings, conclusions, and decree of this Court.

Dated this 20th day of December, 1934.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fol. 191] IN UNITED STATES DISTRICT COURT

PETITION FOR REHEARING—Filed Dec. 20, 1934

To the Honorable the Judges of the District Court of the United States for the Western Division of the Western District of Missouri:

Comes now the above-named plaintiff and shows to the court that he is aggrieved by the opinion and decree of the court in the above entitled cases in which the court dismissed on final hearing plaintiff's petition for a permanent injunction against an order dated June 14, 1933, issued by the Secretary of Agriculture, prescribing certain rates and charges to be observed by plaintiff in its business as a live stock market agency at Kansas City, and plaintiff respectfully requests this court to grant a rehearing for the following reasons:

I

That the opinion and decree of the court contain and are based upon novel but erroneous principles of law in that:

(a) The factors which the court, at pages 4 and 5 of the main opinion, prescribes as proper for the use of the Secretary in fixing reasonable maximum rates to be observed by all of the livestock market agencies engaged in separate and distinct business as competitors on a given market necessarily involve the elimination for rate-making purposes of all competitive costs; disregard the actual experience of these agencies in the matter of costs and expenses; and base rates entirely upon hypothetical considerations and assumed conditions contrary to the actual facts and conditions, to well-established and long-recognized rules of law in rate-making cases, and to the terms [fol. 192] and provisions of the Packers and Stockyards Act, which requires this public livestock market to be maintained as a competitive market.

II

That the court misconstrued and failed to consider the objections made by plaintiff to the findings of the Secretary involved in the present case in that:

(a) The court construed Subdivision (a) of Section VII of plaintiff's petition, and defendants' answer thereto, as presenting only the issue of whether such findings were supported by the evidence; that, on the contrary, the question there presented was whether an unreasonable, arbitrary and illegal method, as a matter of law, was employed by the Secretary in his purported findings as to reasonable functional unit costs for various functions of the business of these market agencies into which the Secretary had divided the operations of these businesses, and as to whether an unreasonable, arbitrary and illegal method was employed by the Secretary in his purported finding of total unit costs through the combining of said separate "reasonable" functional unit costs as found by the Secretary.

III

That the opinion of the court is inadequate, incomplete and too general in character in that:

(a) It does not meet the requirements of Equity Rule 70½ or of the decisions generally of the United States Supreme Court;

[fol. 193] (b) The finding of the court that there was substantial testimony "to support every challenged finding" overlooks and disregards the fact that many of the challenges as contained in plaintiff's petition were admitted expressly or in effect by the answer filed by defendants;

(c) The action of the court in adopting as its finding of facts all the findings of fact of the Secretary makes it uncertain and subject to misunderstanding as to just what the court's findings of fact were;

(d) The court discussed the issues under four major headings, but overlooked and disregarded the fact that the various subdivisions of various sections of the petition contain numerous challenges to the findings and order of the Secretary, and that, except as to the subdivisions contained in Section VII of plaintiff's petition, the court does not discuss any of the issues presented in these subdivisions and makes no findings in respect thereof;

(e) The court does not in its opinion disclose which of the issues presented and not discussed by the court are regarded by the court as immaterial and irrelevant and which are regarded as material and relevant;

(f) The court, at page 1 of the main opinion, through inadvertence states that the number of separate suits pending before this court involving the findings and order of the Secretary is 59, whereas the actual number of such suits was 50; and

(g) The court, at page 3 of the main opinion, inadver- [fol. 194] tently purports to quote for the purpose of comparison with existing rates the rates prescribed in the order of the Secretary as applying to calves, whereas the rates quoted in the opinion apply to hogs.

Wherefore, plaintiff prays the court to grant a rehearing, humbly submitting to such orders as the court may make if the application be without merit.

John B. Gage, Carson E. Cowherd, Attorneys for Plaintiff.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING—Filed Dec. 27, 1934

Comes now the plaintiff in the above entitled case and prays leave of Court to file herein petition for rehearing, a copy of which petition, together with memoranda in support thereof, marked Exhibit "A", is hereto attached; that reference is hereby made to said petition for rehearing for a statement of the grounds upon which plaintiff believes that the Court should grant a rehearing herein.

Wherefore, plaintiff prays the Court for an order permitting the filing of said petition for rehearing herein, and for such general and other relief as to the Court may

seem just and proper and as the plaintiff may be entitled to herein.

John B. Gage, Carson E. Cowherd, Attorneys for plaintiff.

[File endorsement omitted.]

[fol. 194a] In United States District Court

Order Granting Leave to File Petition for Rehearing—Filed Jan. 2, 1935

On motion of plaintiff for leave to file herein a petition for rehearing, a copy of which petition, together with plaintiff's memorandum is support thereof, is attached hereto, leave is hereby granted plaintiff to file said petition.

In the meantime, and until further order of this Court, let all proceedings under the Decree in said cause be stayed.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, Merrill E. Otis, District Judges.

To the Clerk of this Court:

[fol. 195] Let the above Order be entered in identical form in each of the related cases docketed as In Equity Nos. 2329 to 2378, inclusive.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, Merrill E. Otis, District Judges.

[File endorsement omitted.]

In United States District Court

Order to Show Cause—Filed Jan. 2, 1935

On motion of plaintiff, leave having been granted by this Court to file herein a petition for rehearing, it is ordered that defendants herein show cause, if any they have, before the undersigned Judges in the District Court of the United States, for the Western District of Missouri, Western Division, in the Federal Building, at 10 o'clock

A. M., on or before the 26th day of January, 1935, why a rehearing should not be granted in said case.

Service of this Order shall be made upon defendants' attorneys either in person or at their office on or before the 16th day of January, 1935.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, Merrill E. Otis, District Judges.

To the Clerk of this Court:

Let the identical Order be entered in each of the cases docketed as In Equity Nos. 2329 to 2378, inclusive.

[fol. 196] Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, Merrill E. Otis, District Judges.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO CONSOLIDATION—Filed June 15, 1935

It appearing to counsel for the respective petitioners and defendants in the above entitled causes that many of the issues presented in the respective pleadings in each of said causes are common and present in each of said causes the same questions of law and fact, and that it will serve the convenience of Court and counsel if said causes be consolidated for the purpose of trial, presentation and further proceedings therein,

It is hereby stipulated and agreed by and between the parties hereto that the Court may enter a suitable order of consolidation of the said causes for the purpose of trial, presentation and further proceedings. It is understood and agreed by the parties hereto that such order of consolidation may be entered solely to serve the convenience of Court and counsel and that such order shall not prejudice in any manner the right of petitioners and each of them to several and individual presentation, consideration and determination, by any Court having occasion to pass upon the issues herein, of such of the issues in each

of said causes as are several in character and individual to each separate action.

[fol. 197] John Z. Gage, Counsel for Petitioners. Harold M. Stephens, Counsel for Respondents.

June 15, 1935.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER CONSOLIDATING CAUSES—Filed June 15, 1935

Pursuant to stipulation of counsel for all parties, dated June 15, 1935, which has been filed herein, it is hereby ordered that each of the causes covered by said stipulation, the same being in equity numbered 2328 to 2378 inclusive, shall be and the same hereby are consolidated for the purpose of trial presentation and all further proceedings herein.

Arba S. Van Valkenburgh, United States Circuit Judge. Albert L. Reeves, United States District Judge. Merrill E. Otis, United States District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

OPINION FOR PETITION FOR REHEARING—Filed June 20, 1935

VAN VALKENBURGH, Circuit Judge:

In support of the petition for rehearing counsel for petitioner urged the following criticisms of the order of [fol. 198] the Secretary of Agriculture:

1. The Secretary employed an unreasonable arbitrary and illegal method in finding total unit costs through combining separate reasonable functional unit costs; in this manner eliminating all competitive costs for rate-making purposes, in disregard of actual experience, basing rates upon hypothetical considerations and assumed conditions, contrary to the provisions of the Packers and Stockyards

Act which requires the public livestock market to be maintained as a competitive market.

2. It is necessary to consider the individual market agencies rather than to standardize all under a common mathematical rate base irrespective of such conditions as are essential to a competitive public market.

3. This results in the establishment of a monopoly of the market and stifles competition in buying and selling upon the market, tends to weaken and ultimately to destroy the market by diverting business to other more favored markets and agencies, and the undue restriction of the agencies enabled to operate profitably.

4. The Secretary's order eliminates essential competitive costs.

5. With this elimination agencies cannot compete at a profit. This is shown by a comparison with the new costs as applied to actual business operations during the test period.

6. The Tagg case does not apply to the situation here.

[fol. 199] In the Tagg case the court upheld an order of the Secretary in which he used typical experience as his guide for determining reasonable costs for rate-making purposes. Typical costs are presumably based on the actual experience of the members of the industry whose rates are under consideration. In this case the Secretary employed hypothetical costs based not upon present, but upon assumed conditions which he expects may exist at some future time. In my separate opinion, when this case was first decided, I called attention to the unfortunate method employed in fixing the salaries of salesmen and other employees. I said:

"Basing the allowance of salaries upon the potential ability of a salesman to sell a given number of carloads in a year is too restrictive. Such ability is not subject to bare mathematical measure."

Further consideration upon this petition for rehearing convinces that in the instant proceeding the Secretary has departed from the method employed in the Tagg case in the particulars pointed out by petitioner as stated above. Furthermore, I think the drastic reduction of advertising and other costs, essential to getting and main-

taining business, gives scant consideration to the reasonable necessities of the situation as disclosed by experience. I fear the effect of these methods employed may, as suggested by petitioners, tend to weaken, and ultimately to destroy, this market by diverting business to other more favored markets and agencies, and may tend further to the undue restriction of agencies enabled to operate profitably, a result injurious not only to this market, but [fol. 200] equally to the shippers of stock who would most conveniently patronize it. I find myself in full agreement with Judge Wilkerson in the case of Acker vs. United States, recently decided in the District Court for the Northern District of Illinois. He says:

"I do not concur in the findings of This Court which adopt in toto the findings of fact made by the Secretary of Agriculture. Some of them, particularly those relating to salesmanship costs and allowances for business getting and maintaining expenses, are, in my opinion, against the weight of evidence. However, I am not prepared to say that the findings were made without any evidence to support them. I join, therefore, in the entry of the decree dismissing the bill."

I am, therefore, constrained to vote to deny this petition for rehearing in the hope that a renewed application to the Secretary may bring relief if reasonable experience, based upon the conditions imposed by the Secretary's order, is found to justify it.

I fully concur in the foregoing Memorandum.

Albert L. Reeves, United States District Judge.

[File endorsement omitted.]

[fol. 201] In United States District Court

Order Denying Petitions for Rehearing and Entering Joint and Final Decree in Cases as Consolidated—Filed June 20, 1935

The petitions for rehearing, filed by plaintiffs herein by leave of Court, having been presented to the Court pursuant to the Order to Show Cause directed to the defendants herein by oral arguments and briefs of counsel for both parties, and the Court being fully advised in the premises,

It is hereby ordered and adjudged by the court, in accordance with the views expressed in the opinion of the Court, that said rehearing be not granted and the petitions for rehearing should be, and the same hereby are, denied. Exceptions are allowed to the Order of the Court denying said petitions for rehearing.

And it further appearing to the Court that by order of the Court pursuant to stipulation of counsel for all parties, the above cause and related cases bearing Docket Nos. 2329-2378, inclusive, have been consolidated for the purpose of trial, presentation and all further proceedings therein and that separate decrees entered in each of said cases as of the 20th day of December, 1934, should be set aside and withdrawn and a joint decree, in accordance with the views hertofore expressed in the opinion of the Court, be entered as of this date in the cases as consolidated in lieu of said separate decrees to constitute the finding and judgment of this Court,

It is, therefore, ordered, adjudged and decreed that the separate decrees entered in each of said cases as of the 20th day of December, 1934, be, and the same are hereby, [fol. 202] set aside and withdrawn and that the following order, judgment and decree be substituted therefor in accordance with the views expressed in the opinion of the Court:

That the petitions heretofore filed by the petitioners be, and the same are, hereby dismissed at the respective cost of each of said petitioners and that the temporary restraining orders heretofore granted be, and the same are, hereby dissolved and set aside.

It is further ordered that petitioners, and each of them, shall within sixty (60) days from the date hereof, refund, or cause to be refunded by the Clerk of this Court to the users of petitioners' services that portion of the rates and charges collected by petitioners since the 24th day of July, 1933, which is in excess of the maximum rates and charges prescribed as reasonable in the Order of the Secretary of Agriculture dated June 14, 1933, which excess amounts have been deposited with the Clerk of this Court each week during the period since the temporary restraining order was granted, and that petitioners shall as soon as possible after the expiration of sixty days from the date of this Order file with this Court under oath a true and accurate account of the amounts so refunded, together

with the names and addresses of the persons to whom refunds have been made, and also the names and addresses of persons to whom refunds are due but to whom payment has not been made, and the reasons therefore, together with a sworn statement to the effect that such account covers all the refunds which petitioners are obligated to make under the terms of this Order.

Exceptions are allowed to the findings, conclusions and [fols. 203-208] decree of this Court.

And the court being advised of the intention of the plaintiffs herein to prosecute an appeal to the Supreme Court of the United States, does, in order to avoid irreparable damage to plaintiffs, suspend and stay execution upon the judgment herein entered for a period not in excess of the time allowed by law for presenting a petition for appeal herein, upon the condition, however, that the requirement for impounding set forth in the temporary injunctions granted herein shall be complied with by plaintiffs and each of them pending the application for and the allowance of such appeal.

Dated this 20th day of June, 1935.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fol. 209] In United States District Court

Petition for Appeal, Assignments of Error and Prayer for Reversal—Filed June 29, 1935

Petition for Appeal

To the Honorable Merrill E. Otis, Judge of the District Court of the United States, for the Western Division of the Western District of Missouri, the Honorable Arba S. Van Valkenburgh, Judge of the Circuit Court of the United States for the Eighth Circuit, and the Honorable Albert L. Reeves, Judge of the District Court of the United States, for the Western Division of the Western District of Missouri:

Considering themselves aggrieved by the final decree of this Court in the above entitled cases, plaintiffs, therein,

and appellants in this appeal from this decree, and each of them, hereby pray that an appeal may be allowed them, and each of them, to the Supreme Court of the United States for the reasons specified in the Assignment of Errors hereinafter set out. The cases as consolidated by order of the Court present issues in and by which the validity of a [fol. 210] final rate order of the Secretary of Agriculture of the United States, made and entered on June 14, 1933, and fixing maximum rates and charges to be charged by each of said appellants for stock yard services rendered at the Kansas City Stock Yards, Kansas City, Missouri, in connection with buying and selling livestock for others as market agencies at said stock yards, is challenged upon the ground that the rates and charges fixed by said final order as just and reasonable were, and are in fact, unjust and unreasonable rates and charges and confiscatory of the property and livelihood of each of said appellants devoted to the public service, and that said final order is arbitrary, unreasonable, illegal and void because it is in violation of the provisions of the Packers and Stockyards Act, 1921, and it violates the rights guaranteed to said appellants, and each of them, by the Fifth Amendment to the Constitution of the United States, and because it is not founded upon the evidence and disregards the evidence, and because said appellants, and each of them, have been denied the due process of law to which said appellants, and each of them, are entitled under the Fifth Amendment to the Constitution of the United States. Said appellants, and each of them, desire that said appeal shall operate as a supersedeas and state that the questions involved in said decision dismissing the petitions, and each of them, of the appellants present questions of fact and law which are novel and of far-reaching importance; that irreparable damage will result to the appellants, and each of them, pending such appeal, if the decree of this Court should be reversed on appeal by reason of inability of appellants, and [fol. 211] each of them, to recover from and of the persons receiving the excess between the rates and charges ordered by the Secretary in said order of June 10, 1933, and the rates of appellants now in force and effect, and, therefore, pray that an order may be made fixing the amount of security for costs which appellants shall give and furnish upon such appeal, and that upon giving such security and

upon the condition that during the pendency of said appeal each of the appellants shall continue to comply with the conditions upon which the restraining order and interlocutory injunction were issued herein and shall deposit and impound with the Clerk of this Court monthly, on or before the 10th day of each calendar month, a sum equal to the amount by which the amount realized by each of the appellants from such rates and charges for stock yard services as they now or may at any time prior to the final determination of these cases be charging exceeds the amount they would have received if they had rendered such services at the rates and charges provided for in the order of the Secretary of Agriculture dated June 14, 1933, said moneys, together with such moneys as are now impounded, to be held pending the further order of this Court made pursuant to the final decision of the Supreme Court of the United States, and that pending such appeal the said decree of June 17, 1935, so far as the same dissolves said injunction, shall be wholly suspended and stayed until the determination of said appeal by the Supreme Court of the United States.

[fol. 212] ASSIGNMENT OF ERRORS

1. The Court erred in holding that the order of the appellee, Secretary of Agriculture of the United States, issued June 14, 1933, which fixed and specified maximum rates to be charged and collected by each of the appellants for stock yard services as market agencies in buying and selling live stock at and upon the Kansas City public stock yards, in Kansas City, Missouri, was valid and not in violation of the Packers and Stockyards Act, 1921 (42 Stat. L. 163) although such maximum rates and charges would not produce revenue sufficient to enable the appellants, or any of them, under present conditions or conditions shown to exist by the evidence before the Secretary, to furnish efficient stock yard service as such market agencies at said public stock yards, pay the necessary and actually-incurred operating expense incident thereto, provide a fair and reasonable return upon the present fair value of the property devoted by each of the appellants to the service of the public, and furnish a reasonable compensation to the owners of any such market agencies for their personal services rendered as owners of their individual businesses.

2. The Court erred in holding that the maximum rates and charges fixed in said order of the appellee, Secretary of Agriculture of the United States, were not, as applied individually to each of the appellants in these cases, confiscatory of the property and livelihood of each of the appellants and in failing to hold that the enforcement of such [fol. 213] maximum rates and charges will not deprive each of the appellants individually of their property and of their livelihood without due process of law contrary to the Fifth Amendment to the Constitution of the United States.

3. The Court erred, in the absence of evidence and a finding of fact by the appellee, Secretary of Agriculture, that a monopoly existed at said Kansas City Stock Yards in respect to buying and selling livestock, in holding that maximum rates and charges fixed in the questioned order, determined on the basis of assumed existence of such a monopoly and the theoretical stifling of competition between appellants as market agencies in selling livestock for others, with resultant elimination of "essential competitive costs", were not unjust, unreasonable, arbitrary and in violation of the provisions of the Packers and Stockyards Act, 1921.

4. The Court erred in holding that the conclusions of the appellee Secretary of Agriculture, expressed in the order, as to the estimated amount of livestock of the different species that could be efficiently sold by an individual livestock salesman in a year, and upon the basis of which hypothetical salesmanship costs much less than the actually experienced costs were covered into the maximum rates, were supported by any credible evidence, and in failing to find that these conclusions of said appellee setting up arbitrary and hypothetical standards of performance by such salesmen were contrary to the evidence.

5. The Court erred in failing to hold that the failure of the appellee, Secretary of Agriculture of the United States, [fol. 214] to cover into the ordered maximum rates and charges amounts actually expended by the appellants, and each of them, during the test periods utilized by the Secretary and shown in evidence for traveling expenses incident to the appraisal of livestock before sale, supervision of the feeding of livestock enroute to market at feeding stations, advertising, the preparation, printing and posting of

circulars and market reports sent to stockmen, automobile maintenance and transportation and dues and assessments paid to the Kansas City Live Stock Exchange, a voluntary Association, and the making of a hypothetical or judgment allowance in lieu thereof, representing, as the majority of the members of the Court stated in the opinion of the Court upon rehearing "a drastic reduction of advertising and other costs essential to getting and maintaining business," was arbitrary and unreasonable and in excess of the power and authority of such appellee under the provisions of the Packers and Stockyards Act, 1921.

6. The Court erred in failing to hold to the unreasonable and arbitrary and to represent the application of an erroneous conception of established rules of law, the methods employed by appellee, Secretary of Agriculture, in the determination of the maximum rates and charges fixed by said order by purporting to separate the aggregate cost of service shown to have been incurred by each individual appellant into various so-called functional unit costs, excluding therefrom salesmanship and business-getting and maintaining costs and other necessary expenditures actually sustained; then improperly and incorrectly allocating [fol. 215] the remaining expenses to such functions and reassembling, on a wholly arbitrary basis, certain of such functional unit costs applying to individual appellants as representative of the reasonable cost to be covered into such maximum rates, without regard to actual experience or to aggregate expenses shown in evidence to have been sustained by any one appellant or market agency or group of appellants or market agencies, in the entire operations essential to the complete rendition of the public service required, thereby producing an alleged total reasonable unit cost non-typical in character and less than the actually-expended aggregate cost of any individual appellant or agency, or group of appellants or agencies, shown by the evidence to have been sustained in the efficient rendition of stock yard marketing service.

7. The Court erred in not holding that the action of the Secretary was arbitrary and unreasonable in refusing to give consideration to the evidence offered by appellants as to the reasonable value of the personal services of the owners of the respective businesses of appellants.

8. The Court erred in not holding the findings and order of the Appellee, Secretary of Agriculture, to be illegal and void on the ground that the Secretary employed an improper method of determining functional unit costs for those functions of the business of appellants which the Secretary purported to find that the conditions of the business tended to keep down the amount thereof, in that while the allowance made by the Secretary for these costs purports in each case to be based upon and related to the actual experience of appellants, that in truth and in fact, this is [fol. 216] not the case because the Secretary employed a method of preparing the functional cost tables upon which he relied in making said allowances of reasonable costs which under-state the actually-experienced costs of each and all of the appellants for these functions during the test years.

9. The Court erred in upholding the action of the appellee, Secretary of Agriculture, in arbitrarily ignoring or eliminating from consideration selling and buying salaries amounting to $188,346.48, yarding salaries amounting to $109,659.17, office salaries amounting to $37,848.90, business-getting and maintaining salaries amounting to $188,392.44 and non-salary expenses amounting to $150,866.23, as shown in evidence by the appellee's accounts to have been incurred by market agencies operating at the Kansas City Stock Yards during the test period of 1931.

10. The Court erred in failing to hold that the appellee, Secretary of Agriculture, did not exceed the power and authority conferred upon him by the Packers and Stockyards Act, 1921, and that the maximum rates fixed by his order were unjust, unreasonable, invalid and illegal upon the finding of the Court that the said appellee employed hypothetical costs in the formulation of such maximum rates which were less than the actual costs and which were based upon assumed conditions which the appellee expected might exist at some future time rather than upon the actual experience of the appellants, and each of them, as market agencies.

11. The Court erred in not holding that the failure of [fol. 217] the Secretary of Agriculture, an appellee herein, to find as a fact that any of the expenses actually incurred by appellants, and each of them, not covered by such ap-

pellee into the maximum rates and charges denominated as just and reasonable by the order in question, were wasteful, extravagant or unnecessarily incurred by appellants, or any of them, deprived said order of legal force and effect, and rendered it violative of the provisions of the Packers and Stockyards Act, 1921.

12. The Court erred in not holding that the maximum rates and charges prescribed by said order, non-reimbursible of actual expenses incurred by appellants, and each of them, were invalid, illegal and unlawful in that the appellee, Secretary of Agriculture, in respect to those expenses which *be* classified as among those "which the conditions of the business tend to hold down" and for which he purported to ascertain a normal or typical cost "giving due consideration to the circumstances under which each of the respondents operates," employed an arbitrary, illegal and unreasonable method of re-assembling alleged functional unit cost allowances made by him in disregard of the effect that the increased expenditure of money or effort in respect to one of such alleged functions of the business of an individual appellant might have in reducing expenditures in connection with the performance of others of such alleged functions of the business of such individual appellant or market agency.

13. The Court erred in not finding that the appellee, Secretary of Agriculture, in and by the methods of rate-making employed in the formulation of said order, unduly and illegally invaded the right of management and freedom [fol. 218] of ownership of appellants, and each of them, in the control and operation of their respective businesses devoted to the rendition of stock yard services as market agencies.

14. The Court erred in that the effect of the decree is to uphold the action of the appellee, Secretary of Agriculture, in failing to allow as a part of the reasonable operating expenses covered into such maximum rates the cost of public liability insurance and fidelity bond insurance to protect against hazards incident to the business of appellants, and each of them, although in legal effect it is admitted by the answer of the appellees herein that as to all of the original respondents in said proceeding the order in question failed to allow costs of this character aggregating

as to all of the appellants the sum of $19,918.63, as shown by the statistical cost study made by appellee's accountants, although there was no evidence and it is manifest that such cost could not have been reduced had all of the market agency business at the Kansas City public stock yards been handled by a single agency as a monopoly.

15. The Court erred in not holding as erroneous and improper the action of the Secretary in refusing to consider the evidence that co-operative market agencies operating at the Kansas City Public Stock Yards in competition with appellants were, during the periods used as test years, being financed by the United States through agencies set up by it, and that the appellee, as Secretary of Agriculture had recommended, by means of printed bulletins, that these co-operative agencies incur expenses of the classifications, kinds and character and for the purposes which the appellee [fol. 219] refused to allow as a part of the reasonable costs considered in formulating and fixing the Schedule of Maximum Rates and Charges specified in said order of June 14, 1933.

16. The Court erred in not holding to be arbitrary, capricious and violative of due process of law under the Fifth Amendment to the Constitution, the action of the appellee, Secretary of Agriculture, in causing to be introduced in evidence at the hearings held pursuant to his notice of inquiry the results of exhaustive investigations of actual costs sustained by the individual appellants during the test periods used, and in presenting, through his accountants, cost studies based upon such costs as actually sustained without apprising appellants, or any of them, of the intention of the appellee to thereafter employ methods of cost finding not dependent upon the actual expenditures made as shown by said accountants, and of basing his conclusions solely upon his own judgment as to what such expenditures should be under assumed conditions not presently existing, thereby denying to appellants the opportunity to test, explain or refute the fairness or reasonableness of such methods of rate-making or the conclusions reached by said appellee as the result thereof.

17. The Court erred in sustaining in advance of the hearing the motion of appellee to strike from the respective petitions of appellants Section 4 thereof, wherein appel-

lants alleged that they were denied a full hearing before the appellee, as Secretary of Agriculture, preceding the issu-
[fol. 220] ance of the order dated June 14, 1933, in that the Secretary unlawfully delegated the authority vested in him by said Act to conduct said hearing, consider the evidence introduced at said hearing, and in preparing said order and the findings thereof, to subordinates in the Department of Agriculture contrary to the provisions of the Packers and Stockyards Act, 1921.

18. The Court erred in failing and refusing to give appellants an independent review of both the facts and the law, which is essential to a proper judicial review of the rate order if appellants, and each of them, are to be afforded due process of law as guaranteed appellants, and each of them, by the Fifth Amendment to the Constitution of the United States.

19. The Court erred in that it failed to accord due and proper weight to the evidence before it, disregarded many of the facts established by all of such evidence and by the admissions contained in the answer of the appellees, and upheld the final order of the appellee, Secretary of Agriculture, although the conclusions and findings in said order at issue herein are unsupported by any substantial evidence and are contrary to the facts clearly established by such evidence.

20. The Court erred in that, based upon the opinions and findings of the Judges constituting a majority of the statutory Court, said orders of the appellee, as Secretary of Agriculture, should have been declared to be illegal and void under the facts as found in the opinion of the Court on petition for rehearing and the law as applicable thereto.

PRAYER FOR REVERSAL

For which errors said appellant, and each of them, pray
[fol. 221] that the said decree of the District Court for the Western Division of the Western District of Missouri, entered June 17, 1935, in the above entitled causes be reversed and that a judgment or judgments be rendered in favor of the said appellants, and each of them, and for costs.

Dated this 28th day of June, 1935.

John B. Gage, Attorney for Appellants.

[File endorsement omitted.]

In United States District Court

Order Allowing Appeal—Filed June 29, 1935

Plaintiffs in error in the above entitled cause having prayed for an allowance of appeal therein to the Supreme Court of the United States from the decree made and entered in the above entitled cause by this Court on the 17th day of June, 1935, and from each and every part thereof, and having presented and filed their petition for appeal, assignment of errors and prayer for reversal and their statement as to jurisdiction on appeal pursuant to the Statutes of the United States and the Rules of the Supreme Court of the United States in such cases made and provided, and it appearing from said petition and the record in the above entitled cause that there is drawn in question the validity of a final rate order of the Secretary of Agriculture of the United States made and entered June 14, 1933, on the ground that said order was not made in conformity to [fol. 222] the requirements of the Packers and Stockyards Act, 1921, and that the order and the findings on which the order rests are not supported by the evidence and are contrary to the evidence and are based upon erroneous principles of law, and on the further ground that the rates therein prescribed if enforced will deprive the said plaintiffs, and each of them, of their property and livelihood without due process of law in violation of their rights guaranteed to each of them under the Fifth Amendment to the Constitution of the United States, and that said order is hence illegal, unreasonable, unconditional, null and void, and it further appearing that the decision of this Court was in favor of the validity of said order and that said petition is a proper petition for the issuance of this order;

It is hereby ordered by the undersigned, Merrill E. Otis, Judge of the District Court of the United States for the Western District of Missouri, Western Division, Arba S. VanValkenburgh, Judge of the Circuit Court of the United States for the Eighth Circuit, and Albert L. Reeves, Judge of the District Court of the United States, for the Western District of Missouri, Western Division, that an appeal in the above entitled cases as provided by law be, and the same is hereby, allowed to the Supreme Court of

the United States from the District Court of the United States for the Western Division of the Western District of Missouri. And it is further ordered that the Clerk of the District Court of the United States, for the Western Division of the Western District of Missouri, shall prepare and certify the transcript of the record, proceeding and judgment in the above entitled cause and transmit the same to [fol. 223] the Supreme Court of the United States so that he shall have the same in said Court within forty (40) days from this date.

And it is further ordered that the security for costs of appeal be fixed in the sum of One Thousand Dollars.

Dated this 27th day of June, 1935.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER GRANTING APPLICATION FOR SUPERSEDEAS—Filed June 29, 1935

This matter coming on for hearing before the undersigned, Merrill E. Otis, Judge of the District Court of the United States for the Western District of Missouri, Western Division, Arba S. Van Valkenburgh, Judge of the Circuit Court of the United States for the Eighth Circuit, and Albert L. Reeves, Judge of the District Court of the United States for the Western District of Missouri, Western Division, for a supersedeas pending the determination of an appeal to the Supreme Court of the United States from a final decree rendered on June 17, 1935, by the District Court of the United States for the Western District of Missouri, Western Division; and it appearing that the plaintiffs herein have obtained an order allowing an appeal to reverse the final decree of said Court in the aforesaid actions, and [fol. 224] that a citation has been directed to the defendants, and each of them, citing and admonishing them to be and appear in the Supreme Court of the United States, at Washington, D. C., within forty (40) days from the date thereof,

and this Court being fully advised in the premises, it is by the Court found that the questions of fact and of law presented for consideration of the Court in these cases are novel and doubtful questions of fact and law of far-reaching importance inasmuch as the order of the Secretary of Agriculture, which the petitions filed herein sought to annul, involved the fixing of rates and charges for services largely personal in character and the employment of new methods and principles of rate-making, and that unless, pending said appeal, the said final decree of June 17, 1935, so far as the same dissolves the preliminary restraining order and injunction granted herein, shall be wholly suspended and stayed, this Court, from all the evidence in the case, is of the opinion that irreparable damage will result to the plaintiffs, and each of them, pending such appeal should the decree be reversed on appeal; and, therefore,

It is now hereby ordered, that pending such appeal the said decree of this Court of June 17, 1935, so far as the same dissolves the restraining order and temporary injunction issued herein, shall be, and the same is hereby, suspended and stayed until the determination of said appeal by the Supreme Court of the United States upon said plaintiffs' giving the proper security for costs as fixed and determined by this Court in the order allowing said appeal, and as a further condition of the granting of this supersedeas that during the pendency of said appeal the conditions of said temporary restraining order and temporary [fol. 225] injunction shall continue in force and effect requiring that the plaintiffs and each of them continue to deposit and impound with the Clerk of the District Court for the Western District of Missouri, Western Division, monthly, on or before the 10th day of each calendar month, a sum equal to the difference between the amount that plaintiffs, and each of them, hereafter and up to and including the time of the final determination of said cases, receive from the rates and charges for stockyard services supplied at the Kansas City Stock Yards as market agencies, and the amount that such plaintiffs, and each of them, during said time would have received if they had rendered said services at the maximum rates and charges as provided in said order of the Secretary of Agriculture dated June 14, 1933, said moneys, together with any and all other moneys heretofore deposited and impounded with said Clerk by

each of said plaintiffs pursuant to provisions and conditions under which the restraining order and temporary injunction were issued by this Court, to be held by said Clerk pending the further order of this Court made pursuant to the final decision of the Supreme Court of the United States.

Entered this — day of June, 1935.

Arba S. Van Valkenburgh, Circuit Judge. Albert L. Reeves, District Judge. Merrill E. Otis, District Judge.

[File endorsement omitted.]

[fols. 226 & 227] Bond on Appeal for $1,000.00, approved and filed June 29, 1935, omitted in printing.

[fol. 228] IN UNITED STATES DISTRICT COURT

ORDER ENLARGING TIME WITHIN WHICH TO SETTLE STATEMENT OF EVIDENCE—Filed July 30, 1935

It appearing that the record is voluminous and that additional time is necessary to afford petitioners and respondents opportunity to check the narrative and to agree to the settlement thereof:

It is ordered that the time be, and the same is hereby, enlarged to and including August 29, 1935, within which there may be prepared and presented to the Court for approval in narrative form as required by Equity Rule 75 (b), a statement or narrative, or a revised statement or narrative, of the oral testimony and such of the exhibits as are not reproduced in their entirety.

Merrill E. Otis, United States District Judge.

July 30, 1935.

All parties consent to the entry by the United States District Court of the above order July 30, 1935.

John B. Gage, For Petitioners, Plaintiffs and Appellants. Wendell Berge, For Respondents, Defendants and Appellees

[File endorsement omitted.]

[fols. 229-233] Orders extending time to Jan. 6, 1936, within which to file record on appeal are omitted in printing.

[fol. 234] IN UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI

In Equity. No. 2328 (and Related Cases Numbers 2329 to 2378, Both Inclusive)

W. O. MORGAN, Doing Business as W. O. Morgan Sheep Commission Company, Petitioner,

vs.

UNITED STATES OF AMERICA and THE SECRETARY OF AGRICULTURE, Defendants.

Narrative Statement of Evidence

HEARING ON APPLICATION FOR A PERMANENT INJUNCTION

Transcript of evidence in narrative form upon the hearing of the above entitled matter on February 27, 1934, before Honorable Arba S. Van Valkenburgh, Honorable Merrill E. Otis and Honorable Albert L. Reeves, sitting as a three judge court, at Kansas City, Jackson County, Missouri.

Appearances:

For the Petitioner: Mr. John B. Gage, Mr. C. E. Cowherd.
For the Defendants: Mr. Wendell Berge, Special Assistant to the Attorney General. Mr. G. N. Dagger, Attorney for the Packers and Stockyards Division, Department of Agriculture.

[fol. 234-A] J. W. ROBERTS, of lawful age, being duly sworn as a witness on behalf of Petitioner, testified as follows, over the objection of Defendants, that the testimony did not properly relate to confiscation.

Direct examination:

"My name is J. W. Roberts and I live in Chicago, Illinois. I am a consulting accountant and have been engaged in that work 14 years. My experience as an accountant in

matters relating to cost finding has extended over a period of 35 years. The first 15 years of it was spent in the service of the Santa Fe and other trunkline railroads. The next 4 years was spent as a Grade 1 examiner and district accountant for this Western District, with headquarters in Kansas City, of the Interstate Commerce Commission Bureau of Valuation. The next 3 years were spent as general auditor of the United States Railroad Administration. Upon leaving the Administration's service, I entered business as a consulting accountant and have been so engaged up to this time. During the last 20 years my work has taken me into many fields of endeavor and a very large part of that time has been spent in cost analysis work, the design and installation of cost finding systems in various industries in practice before the Interstate Commerce Commission and other regulatory commissions relating to railroad operating cost and things of that sort, and I have handled two of these live stock commission rate cases before the Secretary of Agriculture. I was employed by the petition-[fol. 234-B] ers in connection with this proceeding when before the Secretary, known as Docket No. 311, and prepared certain of these exhibits that have been offered in evidence. I have in my possession the data from which the exhibits were prepared in connection with the application of the several different rate schedules that were considered in that proceeding. In the last rehearing the data was originally assembled in the following form:

The detailed volume of the business handled, arranged according to the brackets or classifications to which individual tariff rates would be applied, was drawn from the detailed account sales of the individual firm on to pick-off sheets. The pick-off sheets were then taken to my office in Chicago where we had an installation of punch card equipment and the information shown on these sheets was transcribed to the punch cards in order to facilitate its sorting and tabulation. The punch cards and the information abstracted from the account sales show the number of head of different classifications or different species, commissions that had been actually earned on that headage as represented by the account sales which represented the amount earned by the producers or owners of the livestock and particular care was used to refine the volume of data so it could be used in connection with the provisions of the then

Tariff No. 3. The revenue test was made of the ordered rates of the prescribed rates in Tariff No. 3 against those [fol. 234-C] then prevailing under Tariff No. 2. When the Secretary's order of June, 1933, was issued, I was requested to use the same volume of business that was handled in 1931 and which was already on our punch cards and make an application of the rates ordered in the Secretary's June, 1933, order to the same volume in order to get a true comparison of the yield of those rates if applied to the 1931 volume with the yield of Tariff No. 3 and Tariff No. 2 rates as applied to the same volume. Tariff No. 3 was not in effect at the time we made this revenue test. My recollection is it went into effect in the summer of 1932. I made an application of the tariff ordered into effect to the actual business as it was transacted by the several petitioners in the year 1931. Petitioner's Exhibit "1" which has been handed me is a summary of that result as applied to the various petitioners by firm number as those numbers are shown in the record of the hearing that has been offered in evidence.

Thereupon Petitioner's Exhibit "1" was offered in evidence.

I also made an application or a revenue test showing an analysis of the revenues as applied to actual business in 1931 by head charge brackets and extra charges under the Secretary's tariff. Petitioner's Exhibit "2" which has been handed me shows the result of my work and my application of that tariff. Dealing with actual species, this exhibit for the respective petitioner agencies shows the con- [fol. 234-D] sist of the volume as it is regarded in the tariff, that is to say, the number of calves, the number of yearlings and the number of cattle which yield head charges under the tariff. In a separate bracket it shows the revenue derived from the extra charges for which the tariff makes provision. It shows in a separate volume the revenue derived from the handling of seconds or "plants" as they are called which are the trader's volume, animals resold on the market, and then shows the total revenue from all classes of business and at the bottom of the sheet the yield of ordered rates and of the Tariff No. 3, both based on the 1933 volume as recapitulated and percentages of reduction indicated. Petitioner's Exhibit "3" which you have handed

me, is a recapitulation of the data supplied by the individual agencies from their books, indicated the selling and buying revenues respectively earned during the first 5 months of the year 1932 and the first 5 months of the year 1933, with percentages of reductions in earnings in the year 1933 for the first 5 months as compared with the preceding period. This statement reflects reduction in revenue from all costs, not merely reductions occasioned by difference in the level of rates. Part of the reduction may be due to a lesser volume, part to a difference in the consist of the volume and part in the difference of the altitude of the rates charged in the two periods. It is not prepared from the same basic data as the other exhibits you have offered in evidence. It is taken from the books of the respondent agencies. This [fol. 234-E] data was requested on a standard form supplied by the agency bookkeepers. I have critically scrutinized it and found out for myself what it represents, which is all I know about it, and this Exhibit "3" is a summary of that information. In the first 5 months of 1932, the old tariff that was in effect at the time this inquiry was started was in operation and in the first 5 months of 1933 the tariff subsequently put into effect and commonly known as Tariff No. 3 was in operation. It might be well to say in explanation of this statement that the revenues shown hereon are those revenues which result from the application of tariff rates only. In other words, no country commissions or off-market commissions or anything of that kind are included and no income derived from actual loans or things of that nature are included.

Thereupon Petitioner's Exhibits "2" and "3" was offered in evidence.

Petitioner's Exhibit "4" which you have handed me consists of two sheets and thereon is exhibited for the three species and for all species respectively the net yield of the rates prescribed in the June 1933 order to compensate the respective owners for return on their investment and for other personal services rendered to their businesses. This information is shown for each of the several firms and for the market as a whole. In that exhibit the return per owner per man day under the application of these rates to [fol. 234-F] the business of 1931 for the market as a whole, including the two cooperative agencies, is the equivalent of $.48 per man day. For the petitioners agencies only, ex-

clusive of the cooperatives, it is the equivalent of $1.33 per man day.

Thereupon Petitioner's Exhibit "4" was offered in evidence.

Petitioner's Exhibit "5" is a single sheet which relates to the 9 petitioner firms which individually handled the greatest volume of any firms on the market. These 9 firms collectively handled the equivalent of 42% of the total volume as measured by the equivalent car lot on the Kansas City market. The exhibit shows the average return per owner for 69 firms contemplating the yield at the rate prescribed in the Secretary's order based upon, first, the cost as alleged by the agencies and secondly, upon the cost as alleged by the Government's accountants. The statement is a double-barreled one. In the case of using the agencies' alleged costs as the basis for comparison, the return per owner under the rate prescribed in Tariff No. 2 would be $4,513.84 per man per annum. Under the rates presently prevailing as prescribed in Tariff No. 3, it would be $2,850.15 per annum and under the rates prescribed in the Secretary's order of June, 1933, the return would be further reduced to $1,170.23 per man per annum. Now, using the Government's own costs as found by their chief accountant, the revenues derived from Tariff No. 2 and [fol. 234-G] compared with the Government's costs would be $4,561.13 per man per annum. The revenues derived from Tariff No. 3 which is now in effect would be the equivalent of $2,897.44 per man per annum and the yield of the rates prescribed in the order of June, 1933, on that basis would be $1,217.52 per man per annum. This exhibit relates to the 9 petitioner firms, giving the firm numbers for identification as used in the hearing, that had individually the largest volume of business on the market. By "per man" I mean just the owners. There are 37 owners and joint owners of these 9 firms.

Petitioner's Exhibit "6" which you have handed me was prepared in the same form and style as Exhibit No. "5" and reflects the same character of information save that herein are embraced the 21 petitioner firms which collectively handled 72.5% of the market volume on an equivalent car lot basis. These are the firms referred to in the Secretary's order and listed in detail at Page 39 of the order.

The comparisons previously described are also reflected on this exhibit and it will be observed when the two exhibits are compared that in this case the net return per owner per annum is in both cases less for the 21 firms averaged together than for the 9 firms averaged together, which is explained by the fact that the 9 firms handled a relatively larger volume per firm than the 21 firms at a consequent lower cost.

Thereupon Petitioner's Exhibits "5" and "6" were of-
[fol. 234-H] fered in evidence.

Petitioner's Exhibit "7" which you have handed me is a one sheet statement and deals with the 59 firms on the Kansas City market. The reference to 59 petitioner firms means that these firms were in business at the time of the hearing. There are only 50 petitioners in these cases before this court and in speaking of the firms remaining, it is those who are petitioners in this case before this court. I have used the term "petitioner firm" to indicate the exclusion of the cooperative firms. The statement undertakes to compare the service costs as found by the Government accountants and as found and alleged by the agencies with the so called reasonable unit costs set forth by the Secretary in the order at Page 79 out of which he had integrated his standard costs which underlies the rates prescribed in the tariff contained in the order. The exhibit shows the costs as they relate to cattle and calves, to hogs and sheep, respectively, and then collectively for all three species and indicates the extent to which the standard costs set forth in the order are deficient to cover the actual operating costs as set forth by the Government and claimed by the agencies. At the bottom line is indicated the extent to which the so called allowed costs are deficient, being 24.2% under the Government costs as found and 31.47% under the cost alleged by the agencies. The Government accountant found an amount which he alleged to represent the invested capi-
[fol. 234-I] tal and equivalent of a 7% return on that amount but he did not include these figures in his total cost or in his total stated cost. Consequently, as may be observed from this statement, there is no return on the investment included in the Government's figures which amount to some $40,000. That element is included in the cost alleged by the agencies, however.

Thereupon Petitioner's Exhibit "7" was offered in evidence.

Petitioner's Exhibit "8" which you have handed me is a companion exhibit to Exhibit "7", being the same in all respects save that it relates to only the 9 petitioner agencies which collectively handle 42% of the total volume based on equivalent car lots. In other words, these are the 9 largest agencies on the market and presumably operate at the lowest cost efficiency. The reasonable cost so called set forth at Page 79 of the order failed to cover the actual costs of these 9 agencies as found by the Government accountants exclusive again of return on investment by 23.58% and failed to cover the cost of the same agencies as found by their accountant by 26.62%.

Petitioner's Exhibit "8" was thereupon offered in evidence.

The deficiency in the so called cost allowance as set forth in the order is occasioned in the main by two things. One of them is the reduction in the allowance of selling costs under the actual costs for selling and this Petitioner's Exhibit "9" which you have handed me bears upon the matter [fol. 234-J] of selling costs and selling performance. I think it is at least fairly comprehensive but it may be well to say that I have attempted to compare here the requirement as contemplated in the Secretary's order with the actual performance of the year 1931 for the agencies on the market as respects the selling and buying of cattle, swine and sheep respectively. On Line 11 of the statement it will be noted that the average proceeds of value of each cattle transaction was $242.78 and on Line 10 it will be noted that such a transaction, which is the average transaction, was disposed of during the year 1931 in an average of 16.900 minutes. The Secretary's requirement as to selling performance of salesmen would require that that time should be reduced from 16 minutes to 6.7 minutes. The number of head of cattle involved in the average transaction was 5.22 head. The number of men which the Secretary's order would allow to handle the sale and buying of 2,284,207 head of cattle which were marketed in 1931 was 78.77 men, whereas there were actually employed 188 men. Now the 188 men actually handled 3.73 sale transactions per hour but the Secretary's requirements would demand that

this performance be speeded up to handle 8.9 transactions, or about 2½ times as many. By "per hour", I mean per market hour. I mean active selling and buying hours. The opportunity for selling and buying is limited to the hours the market is open, of course. The market is open and active on the average of approximately 3 hours per day [fol. 234-K] for 4 days per week, or an average of 2 hours per day for a 6 day week, and the market hours were computed on that basis which I think is substantially correct. Line 6 on the statement shows with respect to cattle that there was actually sold 19.47 head per hour in 1931. I mean per man. Whereas, the requirement of the order would speed this up to 46.47 head per hour. The proceed value of the hourly transaction was actually $905.55 but under the Secretary's requirements, the hourly transaction value would be $2,161.32. The significance of the statement may be gleaned from what I have said and the same remark, with different figures, of course, apply with respect to swine and sheep. The number of salesmen actually employed in the case of swine was 50 and the Secretary's order would contemplate that 12.29 men could handle the volume. The volume was 1,045,048 head. There were 103,341 transactions handled during the year and an average of 3.31 per man hour, and under the Secretary's order 13.48 would be required. The same information is given in this exhibit as to sheep.

Thereupon Petitioner's Exhibit "9" was offered in evidence.

Exhibit "10" which you have handed me consists of 1 sheet. In connection with Exhibit "9", I said there were two things that in substantial measure explained the deficiency of the cost allowance as compared with the actual experience costs and Exhibit "9" deals with the matter of [fol. 234-L] salesmanship and this Exhibit "10" deals with the other factor which is what is commonly referred to as business getting and maintenance expense. On this Exhibit "10", which is prepared in two sections both of which appear on a single page, the top section or Section A provides an analysis of business getting and maintenance charges and Section B at the bottom of the page shows the significance of those charges. In order that this matter may be understood, may I say briefly that this business getting and maintenance expense is a classified account which

the Department of Agriculture has used in its audit and cost studies as far back as I know anything about it. That account is not partitioned by the Government accountants. Everything goes into that one account, called "B-G-&-M". When my audits were made and my costs set up, I respected that classification because to have avoided it or made any extensive refinement would only have added confusion to the picture, but I did make a subdivision of B-G & M because the account really consisted of two things. I used Element A of B-G-M account, which relates to advertising, and we may call it business getting or business maintenance, as we please, it is advertising. And Element B, as I designated it, relates to the remainder of the total expense in the B-G-M account which is not advertising, I think I may say, in any sense of the word, but is more essentially and more particularly an auxiliary selling or in cases auxiliary buying expense which is performed off the market. In [fol. 234-M] my Element B, therefore, I have included all of that expense which is not advertising but which relates to country service, the appraisal of herds, the counsel with the producers, the inspection of his feeding, and the timing of the finishing off of the cattle to hit what the commission man thinks will be a favorable market, etc., and in my treatment of the B-G-M classification expense, these two elements—A—advertising, and B—so called country trips, have been respected throughout. Now, this Exhibit "10", while in Section B it sets forth the characteristics and the details of both Element A and Element B, relates more specifically to Element A or advertising section of the expense and it will be noted that it shows the amounts allowed by the Government accountants, the amounts claimed by the agencies in respect to each subdivision of that expense. There is this important aspect of the B-G-M expense which I think should be considered, as set out in the bracket at the top of the page. The total amount of this account is $451,142.00. Now, of that amount, $249,797.00 is expense which is voluntarily incurred by the agencies. That is, they could stop that expense if they saw fit to do so. It represents cash disbursements, part of which relates to advertising and some part of which relates to the traveling and the incidental expenses of these country trips, but it is all voluntary expense. The remainder of the account, or $201,345.00 is not a voluntary expense on their

part. It is an involuntary expense and in that amount [fol. 234-N] represents merely a distribution to the B-G-M account of a proportion of the salaries of regular employees. So far as my knowledge goes, the men would need be employed whether they made country trips or not. Their time that would be otherwise idle is employed in making country trips and in doing work off the market. Some small part of the Element A expense, or advertising, also represents a proportion of time. In fact, a considerable part of it which is merely a distribution of regular salary time, and I have classified or characterized that labor expense on this statement as an involuntary expense on the part of the agencies in the sense that it could not be escaped if they desired to do so, providing they maintained the personnel which they considered essential to handling animals on the market. The advertising appropriation of this account relates to getting out market letters and advices, to advertising in the newspapers, to some limited extent, certain signs along the highway and other expenditures of analogous character which are purely advertising in their essence. Another part of it relates to the time of regular employees mailing out circulars and of salesmen writing letters to customers which deal with the handling of their transactions on the market as they occurred and that sort of thing. The advertising expense has this significance—that on the basis of the Government's and the agencies' finding, it amounted to only 40.7¢ per customer for the entire year of 1931. Entertainment of customers [fol. 234-O] was held to a very reasonable amount, only $3,095.00 having been spent for that, which is the equivalent of 1.13¢ per customer for 1931. In other words, the price of a postage stamp—not quite. The lower section of this Exhibit "10" sets out the relationship of these advertising expenses to different bases so that it may be considered what significance they really have to the customer or the man who eventually pays the freight. In my classification of voluntary advertising expenses, I included all the market letters sent out by the firms to the customers to advise them of the condition of the market. A very small portion of this is magazine advertising.

Thereupon Petitioner's Exhibit "10" was offered in evidence.

Petitioner's Exhibit "11" which you have handed me consists of three sheets and it also relates to this subject of business getting and maintenance expense, and particularly to what I have designated as Element B thereof, which concerns the country trips and service performed in the country and off the market. The first sheet of this exhibit contains two charts on which I have depicted the effect of this country expense upon the sales price per head, first of yearling cattle, and secondly, the fat or heavy cattle as disclosed by the costs which are of record in this case. The last two sheets of this exhibit are merely the details from which the graphic charts have been prepared. With respect to yearling cattle, it will be observed that as the country trip expense increased in the sense of cost per head, [fol. 234-P] the gross proceeds from the sale of yearling cattle increased in dollars per head up to the point where the expense amounted to 5¢ a head, where the sales proceeds amounted to $38.00 per head, after which the increased amount spent for country trips seemed to have no effect upon the sales proceeds per head. Now, with respect to fat cattle, the sales proceeds per head for fat or heavy cattle ranged from $37.00 per head to $69.00 per head for the year 1931. That is the average for the firms. That information is set forth in detail on Exhibit 249 of the record. Now the expenditure for country appraisal service ranged from about 1½¢ per head to as high as 10¢ per head, but as the expense increased on a headage basis as this chart shows, the price per head realized by the owner from the sale of his cattle on the market also increased. On these charts I have platted with the forked line, so to speak, the actual point experienced by the firms which fell into the different sales proceeds bracket. Then the green line is what we call the median line, or average of these points, and the red line is the trend line which indicates the tendency affecting the expense upon the sales price. The basic data from which this graphic chart is prepared is all in the record. This represents simply a compilation by me of what is already in the record.

Thereupon Petitioner's Exhibit "11" was offered in evidence.

[fol. 234-Q] Petitioner's Exhibit "12" which you have handed me is a comparison of the average costs for selling

and buying services as allowed in the order, as found by the Government accountant and as alleged by the agencies for two groups of firms, the first 9 firms in point of volume and the first 21 firms in point of volume. It is simply an assembly of those costs for convenience and comparison for the average selling and buying costs.

Thereupon Petitioner's Exhibit "12" was offered in evidence..

Petitioner's Exhibit "13" is a single sheet which deals with the confiscatory aspects of the June, 1933, ordered rates as to the 11 leading firms on the market. This includes the 9 firms we have mentioned in the other exhibits, plus the 2 large cooperative firms and also the 23 leading firms on the market which includes the 21 petitioner firms previously mentioned in the other exhibits plus the 2 large cooperative firms. This exhibit shows that considering the Government's costs set up by its chief accountant and which do not include return on investment, and considering the tested yield on the ordered rates, that after paying operating expenses there would be nothing left in the case of the 11 firms to compensate the owners and in the case of the 23 firms there would be nothing left to compensate the owners for the services rendered by them. This is predicated upon the business for the year 1931. This was the [fol. 234-R] test year for the ascertainment of the Government accountants.

Cross-examination:

In several of my exhibits I have indicated that the firms would earn less under the proposed order than their actual costs. In my compilation of those actual costs, I have included throughout an allowance for compensation to the owners that was based upon the appraisal that was made preparatory to these hearings with respect to what was designated here as agencies alleged costs. It is not true in any instance, however, with respect to the costs designated as the Government accountant's costs. In these compilations I have used both my costs and Mr. Bachman's costs. The appraisal was what these men determined the owner's compensation was reasonably worth, not what they were actually paid or actually derived from their business. The appraisal was as to the services actually ren-

dered. The valuation of that service is on an appraised basis. If I found, for instance, or allowed for a certain owner, say, $12,000.00 a year; that does not mean that under the old rate he earned that. It means that the appraisers thought that was what his services were reasonably worth. He may have earned more or he may have earned less. Whatever he did earn was disregarded.

I applied the Secretary's order to the business of 1931 as indicated by the record before the Secretary.

[fol. 234-S] Q. Now, in making that application did you apply the order in toto, that is applying the increases that were allowed as to certain items, buying charges and traders compensation or did you merely apply it in those instances where it would make decreases?

A. No, Mr. Berge, my interest in the matter was entirely professional and non-partisan. I attempted to make a fair comparison of the yield of the two schedules of rates. What I did was limited by availability of means of making the comparison. We had a complete analysis of the selling volume which of course is the predominating volume on the market. We did not have a complete analysis of the buying volume and respecting the buying volume we were placed in a rather difficult position in this respect,—first, we did not have an analysis of it which would permit of an application of the prescribed buying rates. Moreover, had we had such an analysis of the volume, the petitioners contended that the prescribed buying rates were not practical rates and they were prescribed as maximum rates and the petitioners maintained that the existing buying rates were the maximum practical rates and the same is true with respect to seconds. Consequently we took the buying volume and applied to it the prevailing buying rates and we took the seconds volume and applied to the seconds volume the prevailing seconds rates and added that to the ordered rates on the selling volume to get the total revenues.

[fol. 234-T] I did not assume in making my compilations that the increases allowed could not in fact be collected and did not have the data that would show the increases that the Secretary contemplates. It is not an exact statement to say that my application of the order to 1931 only takes into account the decreases rather than the increases which the Secretary has allowed. It does not take into consid-

eration increases, if any, in the allowed buying rate. It does not take into account increases, if any, in the allowed rates applicable to seconds traffic for the reason that the petitioners maintained that while they were maximum rates as prescribed, the present prevailing rates were maximum rates that could be charged. We did not make application of the Secretary's tariff to those consignments in which there were more than one car in any consignment belonging to more than one owner, what is commonly called plural ownership of a car. That was such a complicated matter that I did not make those qualifications purposely a moment ago to avoid confusion. There are a few consignments reaching the Kansas City market which are under Tariff No. 2 and its predecessor designated as plural ownership multiple car lot consignments. Cooperative agencies receive a number of such consignments. The old tariffs did not regard each of the car lots received in a plural ownership consignment as separate consignments which the present ordered rates do regard as separate consignments. There was no record kept of such consignments which could be readily reduced to data form. As a consequence, the [fol. 234-U] comparison of the selling rates—the comparison of the revenue which would result from application of the ordered rates is under stated to whatever slight degree, and I feel safe in saying that it would be slight, relatively slight degree, which might be affected by plural ownership multiple car lot consignments. It is true if the comparison set forth here incorporated the volume of the cooperative agencies, which it does not, which they do not include, there might be a greater under statement of the relative volume yield than there is in the exhibits as they are compiled.

Exhibit "3" as to which I testified that my information was based upon questionnaires relates not to the year 1932 and 1933 but to the first 5 months of each year. In gathering the data as to the first 5 months of the years 1932 and 1933, I submitted a questionnaire and each of the agencies made their respective replies on that questionnaire, the information being compiled presumably by their own bookkeepers, and it was submitted to me and that was all there was to it. I did not see the books. There were some discrepancies between the figures returned by the firms and those obtained by one of your accountants and I investigated those discrepancies which is the extent of my investi-

gation of those figures. I am not in a position to know positively that all of the concerns used uniform methods of taking this information from their books and that the information is strictly comparable. In making the compilation of the performance required by salesmen under [fol. 234-V] the Secretary's order, those figures were derived by dividing the total number of head received at the market by the number of head it is reasonable for salesmen to handle according to the Secretary's order, which resulted in so many men being required to handle so many head. That was approximately my calculation. The Secretary said that a salesman should sell so many cattle per man per annum. Dividing the number of head into the total number to be sold gave the equivalent number of men available to sell them. The Secretary's theory was that a salesman of cattle and calves ought to sell 29,000 head a year, and a salesman of sheep ought to sell 250,000 head a year and a salesman of hogs ought to sell 85,000 a year and only sufficient numbers of salesmen are required at the market as would be necessary to dispose of the total receipts at the market on the basis of each salesman selling that number of head. That is my understanding of the order and that seems to be the basis on which he had allowed costs out of which salaries could be paid and that is precisely the basis of my calculation as to selling. Based upon the revenue test, I took 11 firms, the 11 which were the largest and the most prosperous and I testified as to what their loss would be, operating under the Secretary's order, based upon the revenue test. In that 11, I included the 2 cooperative agencies. I do not know whether the cooperative agencies are resisting the order or whether they [fol. 234-W] are operating under it.

Redirect examination:

It is true that I had none of the detailed data which allowed the application of this rate to the strictly order buying firm or a strictly buying business. They have never been included in my studies. I don't know whether those firms are here contesting this order. As to selling firms, I do not have this data as to selling firms that also maintained a buying service along with their selling service and have not depicted it on one of these exhibits. There was no estimate made of an increase in the rates. There was an inclusion made of the revenue which would result from

selling service but the amount of revenue for selling service was based upon the presently prevailing selling or buying rates. The revenues shown here are revenues from both selling and buying service. In other words, there are no omissions or exclusions of revenue from any of my exhibits, either selling or buying, with a single exception of the plural ownership multiple car lot consignments which is an unknown quantity but from my experience of six months' studying the revenues, I am in a position to say it is a negligible figure. By "plural ownership," I mean a consignment of two or more cars, one consignment moving in two or more cars where the ownership is plural, and we all know they are very rare specimens of consignment.

Petitioner's Exhibit "13" was thereupon offered in evidence.

[fol. 234-X] The witness was then excused.

The petitioners, severally and individually, on behalf of each petitioner in each case offered in evidence the transcript of record of the hearing before the Secretary of Agriculture upon which the order referred to in the several petitions is predicated, together with the exhibits offered both by the complainant and the respondents in that proceeding. Subsequent to the hearing on the 27th and with leave of court taken at the time of the hearing, the following stipulation was filed as evidence to be considered by the court along with the other evidence in the case, to-wit:

STIPULATION AS TO COMPARISON OF GROSS INCOME FOR PERIOD OF JAN. 1 TO MAY 31, 1932 WITH SAME PERIOD FOR 1933, ETC.

"It is hereby stipulated and agreed by and between the parties hereto that the following is a true and correct statement of the comparison of gross income for the period January 1 to May 31, 1932, with the period January 1, to May 31, 1933, received by each petitioner hereto:

Commission Firms	1932 1st 5 mo.	1933 1st 5 mo.
Greer & Co.	$3,373.63	$3,677.62
Burlington L. S. Com. Co.	13,899.30	10,924.85
Leitch Sheep Com. Co.	9,872.08	8,769.36
John Clay Com. Co.	47,040.80	43,472.89
W. E. Curtis & Co.	4,297.90	4,449.85
Chas. Dixon Com. Co.	13,536.79	10,082.22
Drumm Standish Com. Co.	9,647.33	6,939.13
Elliott-Swain & Co.	5,256.95	5,191.55

Commission Firms	1932 1st 5 mo.	1933 1st 5 mo.
Ham Knighton Com. Co. (as given by bookkeeper)	2,657.29	2,937.40
K. C. Live Stock Com. Co	6,135.00	6,861.00
Kile Com. Co	9,377.85	8,692.92
Lewis-Flournoy Com. Co	3,924.45	3,503.36
[fol. 234Y]		
Walter G. Land Com. Co	$3,051.10	$2,286.75
Long-Perry Com. Co	13,589.67	11,687.65
Maxwell-Furnish Com. Co	9,700.47	9,923.97
Fred O. Morgan Sheep Com. Co	346.37	328.42
Martin-Blomquist & Lee Com. Co	39,778.91	36,190.18
National Live Stock Com. Co	30,861.73	24,666.13
Fern O. Sanders	9,618.95	4,473.46
Stagner-Pieronnet & Willis	6,460.80	5,004.52
H. Thies	6,715.10	6,651.50
Wilson-Egan & Co	23,336.13	18,011.39
Wester Bros. & Smith	9,608.96	8,800.31
Warren Cummings Com. Co	10,847.10	9,186.08
Inman-Hutton Com. Co	4,418.53	2,949.55
Crider Bros. Com. Co	18,065.23	15,458.63
Knight & Tice Sheep Com. Co	4,595.35	3,358.84
Tamblyn Com. Co	4,634.30	3,480.28
Nichols, John M. Com. Co	2,104.25	1,745.25
Gladish Live Stock Com. Co	2,889.40	2,637.95
Ehrke-Martin Com. Co	11,677.88	9,249.14
Farrar-Davis & Campbell	5,698.25	5,251.00
Laird Bros. Com. Co	9,249.88	8,045.57
Cassidy-Southwestern Com. Co	10,667.29	8,925.69
Witherspoon Com. Co	16,791.77	13,626.49
Moffett L. S. Com. Co	9,384.45	7,911.77
Ryan-Robinson Com. Co	15,417.39	13,957.82
Harry Kennaley Com. Co	25,485.41	19,839.06
Jay D. McCormick	647.25	632.62
Ragland & Storts Com. Co	8,039.23	6,963.80
Heinie Klecker Sheep Com. Co	7,749.12	1,829.38
Lee A. Cox Com. Co. (started business July 1st, 1933)		
Less White & Seamans	3,491.46	3,443.23
Swift & Henry Com. Co	45,818.05	39,582.80
Bowles L. S. Com. Co	14,649.84	12,209.77
Stuart-Robinson-Hoover	18,395.55	14,109.82
Wright & Baucus Com. Co	16,116.54	13,922.94
Haggart-Wilson Com. Co	12,459.50	11,366.90
Poole-Dempsey-Rutherford	10,773.89	8,254.90
McGrath L. S. Com. Co. (Started business) March 1st, 1933.		
Henry F. Carnes Com. Co	492.00	580.49
Welch L. S. Com. Co	624.40	730.12
Frank Standish Com. Co. (Started Business) December 1932—$349.45 (Dec. 1932—$$585.02)		
Order Buyers		
A. J. Maurer	$19,507.00	$12,946.40
Great Western	14,436.90	11,225.00
Stanley Com. Co	370.80	185.05

[fol. 234-Z] It is further stipulated and agreed that the following is a true and correct statement of the gross commission revenues in 1932 compared to 1931 with the percent of difference:

No.	Name	1931	1932 (footnote)	Per Cent of Increase	Per Cent of Decrease
1	Morgan & Co., Fred O	$3,600.28	$1,848.82		48.65
4	Ragland-Storts & Burrus Com. Co	22,336.53	20,656.90		7.52
5	Klecker Sheep Com. Hinie	17,556.01	14,248.32		18.84
6	Lewis Flourney L. S. Com. Co	11,688.49	9,655.79		17.39
7	Maxwell Com. Co., Grover C	20,078.27	25,871.13	28.85	
9	Nichols L. S. Com. Co. Jno. M	5,687.96	5,289.20		7.01
12	Bowles Livestock Com. Co	45,066.81	39,943.38		11.37
13	Crider Bros. Com. Co	47,563.60	44,653.02		7.12
14	Dixon Com. Co. Chas	32,208.87	32,765.87	1.73	
15	Elliott, Swain & Co	14,911.27	12,889.50		13.56
16	Farrar Davis & Campbell Com. Co	18,837.50	15,023.60		20.25
17	Gladish L. S. Com. Co	8,421.15	7,838.45		6.92
18	Haggarty, Wilson Com. Co	37,283.65	35,623.25		4.43
20	Kansas City L. S. Com. Co	19,581.50	18,528.85		5.38
23	Sanders Com. Co. Fern O	20,792.66	22,201.41	6.78	
26	Wester Bros. & Smith Com. Co	21,897.77	26,276.60	20.49	
29	Stagner, Pierronett & Willis Com. Co	18,286.82	19,384.09	6.00	
30	Tamblyn Com. Co	15,428.75	14,897.30		3.44
33	Carnes Com. Co. Henry F	1,522.95	1,157.15		24.02
34	Cummings Com. Co. Warren	29,041.10	27,870.87		4.03
35	Drumm-Standish Com. Co	45,007.41	32,994.25		26.69
37	Link Fashen Com. Co	1,199.90	1,539.14	28.27	
42	Long & Perry Com. Co	39,296.66	36,841.62		6.25
43	Knight & Tice Sheep Com	17,419.88	12,803.79		26.50
44	Leitch Sheep Com. Co. W. M	27,679.43	23,342.99		15.67
46	National L. S. Com. Co	91,216.54	77,895.42		14.60
48	Poole-Dempsey, Rutherford Com. Co.	27,216.03	25,613.06		5.89
51	Kennealey Com. Co. Harry	54,703.22	55,831.43	2.06	
53	Ehrke-Martin Com. Co	23,881.88	25,048.50	4.88	
54	John Clay & Co	154,137.19	126,258.07		18.09
55	Baucus & Co	40,949.18	38,638.01		5.64
59	Swift & Henry Com. Co	126,036.09	108,096.90		14.23
60	Thies & Son, H	17,078.82	15,722.47		7.94
61	Knighton Com. Co. Ham	7,718.13	6,251.94		19.00
62	Laird Bros. Com. Co	23,488.44	25,006.48	6.46	
63	Martin Bros. & Lee Com. Co	104,993.75	94,429.79		10.06
[fol. 234AB] 65	Moffett Com. Co	25,643.59	26,461.75	3.19	
66	McCormack L. S. Com. Co. Jay D	1,983.00	1,652.20		16.68
70	Kile L. S. Com. Co. W. C	26,391.90	21,226.70		19.57
71	Ryan, Robinson Com. Co	41,474.09	41,478.10		
72	Welch L. S. Com. Co	1,695.05	1,519.15		10.38
73	Witherspoon L. S. Com. Co	51,233.80	42,730.86		16.60
75	Curtis & Co., W. E	16,274.93	11,568.25		28.92
76	Greer & Co	8,097.73	8,271.53	2.10	
77	Inman Hutton Com. Co	15,927.86	10,330.08		35.14
78	Land L. S. Com. Co. Walter G	7,563.75	8,697.13	13.03	
79	White L. S. Com. Co. Less	7,446.58	8,342.36	10.74	
82	Wilson, Egan & Co	67,812.70	61,312.70		9.59
83	Burlington Com. Co	68,677.60	34,231.69		50.16
84	Cassidy Southwestern Com. Co	52,999.55	37,852.88		28.58
87	Hamer, Dave	8,883.96	11,629.93	23.61	
10	Producers Com. Assn	102,078.98	95,218.74		6.72
36	Farmers Union L. S. Com. Co	99,769.35	86,762.56		13.04
	Part Year Firms:				
11	Andrews L. S. Com. Co. L. B	1,845.15			
19	Interstate Com. Co. W. E. Burrus	8,135.30			
25	Stuart & Co., C. A	36,280.93			
52	Jefferson, Lowry, Davis Com. Co	14,781.04			
56	Robinson, Hoover Com. Co	23,193.08			
67	Peed L. S. Com. Co. W. H	2,167.55			
74	Boddington Com. Co., Frank	5,923.11			
88	Kimmons Com. Co. Ira	1,832.75			
—	Stuart, Robinson-Hoover Co		49,595.06		
	Sub-Total Part Year Firms	94,158.91	49,595.06		47.33
	Grand Total	**1,911,837.81**	**1,697,470.93**		11.21

Note: Commission revenue in 1932 hereon does not include "other" commissions in the amount of $24,093.41 reported as received; because the source of the commission was not indicated.

Note: If "other" commissions were included in 1932, the per cent of reduction would be 9.95% — — — — — — —

(Sgd.) John B. Gage, Attorney for Petitioner.
(Sgd.) Wendell Berge, Special Assistant to the Attorney General.

March 28, 1934.

This was all the testimony that was offered in the case.

[fol. 235] UNITED STATES OF AMERICA:

BEFORE THE SECRETARY OF AGRICULTURE,
BUREAU OF ANIMAL INDUSTRY

Docket No. 311

In re

SECRETARY OF AGRICULTURE,

vs.

L. B. ANDREWS, Doing Business as L. B. Andrews Livestock Commission Company, and Other Market Agencies Operating at the Kansas City Stockyards, Kansas City, Mo., Respondents

Abstract of Record

(Offered at hearing on application for a permanent injunction)

[fol. 235a] ORDER OVERRULING OBJECTION TO PROCEEDING

Upon inquiry the examiner advised counsel for respondents that this was an inquiry and not a hearing on a complaint. Whereupon counsel objected to the proceeding on the ground that it was not held before the Secretary. Counsel moved that a separate and independent hearing be afforded each of the respondents represented by him.

The objection was overruled and the motion denied.

Abstract of Evidence

Offers in Evidence

Evidence Offered by Government

Pursuant to the above order of inquiry the hearing therein specified began in the Kansas City Athletic Club, Kansas City, Mo., on December 3, 1930, before an examiner of the Department of Agriculture. The Government and those respondents not otherwise heretofore mentioned were presented by counsel.

Respondents' Tariffs

Government Ex. No. 1

The Government introduced in evidence as Government Exhibit No. 1 a compilation consisting of Kansas City Livestock Exchange Tariff No. 1 with supplements 1 to 5, inclusive, which had been superseded by the next tariff in the compilation known as Kansas City Livestock Exchange Tariff No. 2 and supplements 1 to 3 thereto.

In this compilation there were also copies of individual tariffs filed by certain ones of the respondents as supplements to Tariff No. 2 along with the statements of various respondents subscribing to Tariff No. 2. Counsel objected [fol. 236] to this exhibit on the ground that it did not contain the individual tariffs which had been filed on behalf of each of the respondents.

Government Exhibit No. 2

The Government next introduced in evidence Government Exhibit No. 2, the same being a compilation of individual tariffs filed by order buyers at the Kansas City market.

Government Exhibit No. 3

The Government next introduced in evidence Government Exhibit No. 3 which is a compilation consisting of a copy of Tariff No. 1 and supplements 1 and 2 thereto filed by the Farmers Union Livestock Commission, respondents in this proceeding.

Government Exhibit No. 4

Government Exhibit No. 4 consisted of a copy of Tariff No. 1 and supplement 1 thereto of the Producers Commission Association and Tariff No. 2 and supplements 1, 2 and 3 thereto filed by the same association.

Government Exhibit No. 5

The Government introduced Government Exhibit No. 5 containing the tariffs of the market agencies at the following markets: South St. Joseph, Mo., Denver, Colo., Wichita, Kans., Chicago, Ill., National Stock Yards, Ill., Sioux City, Ia., and Fort Worth, Texas, and a copy of Secretary's order in Docket No. 143 containing the rates and charges prescribed for the market agencies at the Omaha market. [fol. 237] Counsel for respondent objected to the introduction of this exhibit on the ground that the rates and charges at other markets had no bearing on the reasonableness of rates and charges at the Kansas City market and for the further reason that the tariffs had not been authenticated. Counsel for the Government stated that the exhibit would be reoffered after authenticated copies had been received.

Government Exhibit No. 5-A

This exhibit is a copy of the tariff of the market agencies at the Oklahoma National Stockyards. This exhibit was not offered until an authenticated copy could be received. Nature of Respondents business and character of service rendered:

Fred H. Olander was called as a witness by the Government and testified as follows:

My address is 328 Livestock Exchange Building, Kansas City, Mo. I have been engaged in the livestock commission business since 1913 with the exception of two years during which I was in the Army. My father has been in the business for over 50 years and is still an active member of the firm. The name of the firm is the National Livestock Commission Company. I am at present engaged in the selling of fat steers and am vice-president of the company. I am charged with the responsibility of some departments of the

work in the office which includes correspondence, market information and other details of the business. I have been selling fat steers since 1924. Prior to that time I was selling butcher cattle, including the stocker and feeder grades, [fol. 238] and prior to that I was engaged in selling calves. Prior to selling calves I was engaged in doing yard work and weighing cattle. Prior to that time I was running trains and receiving livestock on the chutes.

Fat steers are known in the livestock business as those cattle which are eligible to be sold in the slaughter trade. They are bought by packers and order buyers and sometimes by feeders, for finishing purposes.

There are peaks and valleys in the receipts of fat cattle at this market. Fat cattle are received during every month and week in the year. Corn fed cattle are generally marketed from the close of the pasture season, about the first of October, until the first of June. The grass-fed cattle are marketed from the first of July until the grass withers in the fall. Stockers and feeders are received every month of the year but the peak movement is in late summer and continues on into early winter. Livestock farmers throughout the country are the principal purchasers of stocker and feeder cattle. Our firm sells a rather large percentage of its stocker and feeder cattle direct to countrymen or buyers who represent countrymen. There are men known as traders who buy stocker and feeder cattle and direct them to other points for resale. There are dealers who specialize in stocker and feeder cattle and a few specialize in fat cattle. The order buyer is a man who receives orders to buy livestock for people who reside at different points through- [fol. 239] out the country. A shipper is a man who is willing to go out on the market and buy cattle, having in mind he may be able to ship these cattle to some other market or to some other point in the country and make a profit in the transaction.

As trains are pushed down the unloading tracks one of the railroad company employees ride on one of the cars carrying in his hand the waybills of the railroad company. He takes the waybills to the train office and turns them over to the employees of the stockyard company who takes the information from the bills regarding the consignee, consignor, the car number, and the kind of livestock. These sheets on which the information is copied are hung on clips against the sides of the wall in the main lobby of the train

office building. The train runners of the various commission firms come to these bills and if they have a consignment they take down the information on a book.

For the first four days of the week the train runner in our firm works from 6:00 in the morning until 5:00 or 6:00 o'clock in the evening. Some days they get away earlier. We require them to stay around in case something does turn up.

Our firm employs two train runners. The stockyard company has employees at the place between the different shipments of livestock. We have a man that goes to work at 6:00 o'clock in the evening and works somewhere from 6:00 to 8:00 the next morning receiving livestock consigned to us. He also yards for one or two other firms at night. Most of the sheep consignments are yarded at the sheep barns by em- [fol. 240] ployees of the stockyard company. The head yardman meets the train runner who is at the head of the different shipments that he is bringing over from the chutes and he takes a list of the owners' names, car numbers, chute numbers, and the number of head from the train man who has all this information in his book. Then the head yardman with his assistant yardman starts the work of feeding. They order the feed from the stockyard company who has a feed man with a horse and wagon who takes the pen numbers and puts in the number of pounds or number of bales ordered. The yardman helps to straighten the hay round.

The stockyard company usually has two men on each feed wagon. One man tosses the hay into the pens, and there is an assistant feed man who goes into the pens with a pitch fork and distributes the hay. We require our yard men to be on deck at six o'clock in the morning. After the cattle are turned over by the train runner to the head yard man and his assistant, they see to the feeding, watering, condition of the pens, and any distinguishing marks on the cattle. All of one consignor's shipment is placed in the same pen. However, it is sledom that a load of cattle will go just into one pen and not require sorting of some kind.

A straight consignment is a consignmnet of livestock [fol. 241] which comes in from one owner, and consists of one species. Consignments which we refer to as plural ownerships are those in which there are more than one owner's livestock. Mixed shipments refer to those which contain cattle and hogs, or cattle and sheep, or cattle, hogs and sheep.

The truck driver who brings livestock to the market delivers to the employee of the stockyard company a slip which contains the number of head of livestock, the owner's name, and his post office. That employee turns over one copy of that information to our yardman, who receives the livestock at the drive-in gate. He seeks the most advantageous route from the north gate to our pens, in order to facilitate the movement of the cattle from the gate to the pens. This man that brings the cattle over is similar to a train runner.

In our firm, the salesmen do practically all of the sorting. The salesman must have the services of a yardman. He places the cattle in the alley, and the yard man gets hold of the gate to the pen, and brings the cattle up the alley, one by one, past this gate, and he calls in, or by, as the case may be, with the particular animal; and, while he is doing that, another yard man has started the water in the pen, after cleaning it out, and straightened up the hay, and as these cattle are sorted into the pen they have the opportunity to fill at a water trough.

We try to employ yard men of good average intelligence, active, and possessing an instinct that is necessary to a man [fol. 242] that works in the yar-s. A yard men must know cattle, and have a knowledge of the different breeds. He must be able to distinguish an animal several hours after he has seen it. The yard man is also called on to keep the pens clean. In dry weather, this is not so much of a job, but is quite a task in wet weather. It is one of their responsibilities to keep the pens and the watering troughs clean and the hay mangers devoid of waste hay. We place manure under the mangers and off of the main floor of the pen. Later on, the stockyard company will come around with wagons and remove it altogether.

Some days we get very little livestock sold until noon. The buyers do not seem to come out as early in the morning as they did 15 or 20 years ago. In those days you could tell within a nickel or ten cents a hundred just what a load of cattle was worth. Now, we get bids that vary as much as $1.00 to $1.50 a hundred on the same cattle from two different buyers, and that has a tendency to slow up the selling of livestock. It has been increasingly difficult from year to year, from the time I started selling livestock up to the present time, to dispose of this livestock. I have an idea that perhaps it has increased competition, the draw-

ing on to our markets of buyers from a great many distant points, has tended to do that thing. It has slowed up our local packers.

As a rule there are many more buyers for butcher cattle than there are for fat steers. The number of sales in the butcher alley, as a general rule, outnumber considerably [fol. 243] the number of sales that are made in the fat steer alley. As a general rule, the clearance has been pretty well made of cattle in the commission men's hands by three o'clock. A very small per cent of it would be sold by noon.

Friday and Saturday are rather light days. The first four days of the week, beginning with Monday, are the heaviest runs. In our own case our office is open six days a week until six o'clock in the evening, and on Sundays until five o'clock in the evening. We keep two yard men at the stockyards on Sunday. There are very few Sundays in the year that the partners in my business do not spend a part of the forenoon at the stockyards, because we have customers coming in on Sundays with their livestock. Usually our office force works a half a day on Saturday.

In describing the activities of fat cattle salesmen I will use myself as the individual I am going to describe. One of the yard men calls me the first four mornings in the week at 5:15 during the fall season of the year, when, because of the greater amount of sorting and larger strings of cattle which arrive from the pastures in the fall of the year, it is necessary for us to get down earlier than usual, in order to get the sorting done in time to show it at eight o'clock in the morning when the market opens. During the winter season, when there is not the big strings of cattle, and the consignment consists more of smaller units, we generally figure on arriving at the market between ~~six and~~ seven [fol. 244] o'clock, depending on the amount of business that is in sight for that day. The yard man calls me again when he reaches the yards around six o'clock, and know what has arrived during the night. When I arrive and change my clothes, I immediately go to the bulletin board in the lobby of the Exchange Building, upon which is placed the receipts of a great many of the principal livestock markets in the country. I can tell something about the available supply on that day's market. On the previous day, I have made it a point to contact as many of the head steer

buyers for the packers as possible, and try to get from them any information which might be of value to me on the next day. They may have an inquiry for a certain class of cattle, and I get from these buyers all the information I can relative to the way the cattle that I have sold them have dressed out. After I have sized up the receipts of the different markets, I go out to the pens and I go into each pen in our alley which contains steer cattle. I look each pen over very closely. I decide whether or not that particular pen of cattle should be sorted to bring the most dollars. I look them over for weight, for quality, and I have in mind their origin. I have in mind the particular owner, and how he handles his cattle. I take into consideration the conditions as to the fat of these cattle. I look at their briskets and their loins, and I put my hands on some of them to feel the amount of fat that they carry. I take all these things into consideration in making up my mind how we are going to handle that particular load of cattle, and what I am going to ask for them. Then, I put [fol. 245] these cattle out in the alley, and sort them, as previously described. Those cattle which we do not have to sort are split into small lots of eight or nine cattle to the pen, in order to give them every chance to drink.

After I have gone through the performance of grading and sorting these cattle, and fixing them up ready to show, I will drop into the lobby of the building, and look at the eastern beef markets. We know that Boston, New York and Philadelphia are right in the center of the big consuming trade of our country. If beef is moving pretty well down there, maybe at higher prices, it is some indication to me that maybe I can get some higher prices for the live cattle that I have got to sell. I have the report of the receipts, and I also have the boys in the office get me every morning the amount of cattle that the different buyers of fat cattle have purchased the day before. I keep a check by days of the packer buyers' operations, and I will see how many they bought compared with previous days' purchases. It may show that one packer has not bought many cattle. I know that he has a plant that he must keep going, and I know that he is going to have to have livestock. So, I have a hunch that he might be a pretty good buyer the next day. I make it a point to get him when he comes out in the morning and show him my cattle.

I may have seen a number of these cattle in the country. We have many requests coming from the country, and I have gone to the owner's farm in order to counsel with him and advise him what to do. I spend a good many week-[fol. 246] ends in the country. All of the members of our firm do some appraisal work; that is, I mean they go to the country and advise with customers in regard to the handling and marketing and the present value of their livestock. I could do a lot more country traveling then I do, but it is quite expensive. We have not got enough men to put them out to make the visits that we are requested. I do not imagine that I have asked a half a dozen people in my life for a load of livestock. I have an idea that if I cannot impress myself upon the owner of the livestock by the way I work for him, and by the things I stand for, I don't think that I would gain much by asking him to ship to me. The fact that I am there would indicate to him that I would be glad to help him in the sale of his livestock.

We spend quite a little time hunting buyers. That is different on different days. There are days when there is a good active market for fat cattle and it may be that receipts are short on that day. The buyers will look you up on those days. When you have lots of them you have got to put in your time trying to get buyers. Our firm has two fat cattle salesmen, two butcher cattle salesmen, one calf salesman, two hog salesmen, and our sheep salesman is a man who has a commission business of his own. The fat cattle salesmen sell fat steers and feeders. I sell most of the fat cattle in a year's time and he will sell most of the feeders. In the butcher cattle division my brother sells the fat butcher stock and the bulls. The other butcher salesman sells the stocker and feeder female cattle.

[fol. 247] We also have one stocker and feeder salesman on steers. The fat steer salesman, other than myself, devotes his principal attention to selling those cattle that come in as stockers and feeders which are fat enough to be sold for slaughter. In a very small firm one man may sell all the cattle that he receives. In our opinion it is an advantage to our customers by reason of the fact that we have two fat steer salesmen. In the opinion of others it may not be any advantage. The volume of business in some firms might be so small as not to permit it. The purpose of having different salesmen for different grades

of cattle is to render a greater service. It is also occasioned by the buying methods of packers. Instead of weighing all the cows to one pen as they used to do, they have a number of different pens and in selling to those packers a commission firm is required to weigh these cattle to the different numbered pens. I do not know what proportion of our cattle is sold as fat steers. We contact with the buyer either by locating him in the yards or in the event he may come to our pens he will say, "I will buy certain kind of cattle." We have to know whether or not we have cattle in the alley that is the kind he wants and we will escort him to the pens, let him in and go with him. He will ride through the cattle and we will be right there by his side as he looks them over. If he decides he can use them he makes a bid which may be what you think is about the worth of the cattle and then you commence to trade with him. You try to get him to put on some more and use the best sales talk you have. You give him all the [fol. 248] information about the cattle, as to where they came from and who fed them. He may not come up to the price that we think the cattle are worth and we will let him go and then get another buyer. We go through this performance with the different buyers until we get a buyer who will pay the highest price. In the case of my firm the majority of fat steers is sold to local packers. Armour & Company have three buyers, Cudahy & Company have two buyers, Swift & Company have two buyers and Wilson & Company have three buyers for fat steers on this market.

We have the Baum Packing Company which occasionally buys fat steers. A few other small slaughterers buy a few fat steers now and then. They are on the market practically every day. There are instances on good active markets when we may trade with the first buyer on a load of cattle, but that is rather the exception than the rule. I would not hazard a guess as to the average number of buyers that I will show cattle to in a day. We have all kinds of markets to contend with in the course of a year's time. Some out-of-town packers have salaried buyers. The American Packing Company of St. Louis has one buyer on the market on salary. The local packers have other buyers for butcher cattle and for calves. According to trading customs we do not have an unlimited amount of time to

make up our minds whether or not we will accept a bid because when a buyer leaves your alley he does not have to take the cattle at the bid he placed on them. If you sell to him while he is within the confines of your alley under the trading rules he must take them. The salesman sells [fol. 249] when in his judgment he has gotten the best price. After I have sold a pen of cattle I tell my yardman that the pen of cattle weighs to such and such a buyer. When he has free access to the scales and when he can move clear up to the scale gate he opens the gate, or I may open the gate and drive the cattle out. He goes ahead of the cattle to the scales and I may follow them, somebody else may follow them or the owner may follow them. At the east end of the scales is a stockyard company employee who has charge of the gate. He will open the gate and we will push the cattle onto the scales and close the gate. Our yardman tells the stockyard man to whom the cattle are to be weighed. The stockyard company man calls through a tube to the stockyard foreman on the other side "National Livestock to so and so." Our yardman goes into the scale house and tells him who owns the livestock and to whom they are to be weighed. The weighmaster weighs the cattle, marks the weight down, and makes notations relative to who is weighing them, the buyer, the owner, the number of head and the weight. When the cattle have been counted off the scales by the stockyards-foreman he registers the number of cattle in the draft on a machine which also registers in front of the weighmaster, he records the number of head on the ticket. The weight is then stamped on the ticket. He compares the stamped weight with the written weight and, turns the ticket over to the yardman. The yardman averages the weight and writes a description of the cattle on the ticket and hands the ticket [fol. 250] to the salesman who registers the price at which he sold the cattle.

A draft is one unit of livestock which passes over the scales at one time. In the event large drafts of cattle are sold the number of cattle that can be placed on the scales determine the size of the draft. A draft consists of all cattle from a given lot belonging to one owner, sold at the same price to the same purchaser. Cattle are moved from the scales by the employees of the stockyards company to

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the receiving pens of the purchaser. Title passes to the purchaser at the scales. In the case of stocker and feeder cattle the buyer has the privilege of weighing back lumpjaws or unmerchantable cattle. He is allowed three hours from the time the livestock is delivered at his pens to inspect the cattle and weigh them back to the seller. In the case of butcher cattle which arrives at the pens of the purchaser after 3 o'clock in the afternoon he is allowed until 10 o'clock the next morning to weigh back unmerchantable livestock.

The scales are located in different parts of the yards and the stockyard company makes an allotment of the firms that are to weigh at a certain scale and also makes some allotment as to the time that will be allowed the firms and they also allot turns. For instance, there may be nine firms weighing at a scale and each of the nine firms will be given a number from 1 to 9. When the scale opens No. 1 firm can go up and weigh their allotted time. If they haven't any cattle to weigh then firm No. 2 can weigh. The time [fol. 251] allot-ed depends upon the volume of livestock that the various firms receive. After the scale ticket is returned to the salesman and the price marked it is sent to the office by the yardman or by an owner who happens to be going that way. We are anxious to return the proceeds to the shipper as quickly as possible. In our firm the ticket goes to one man who has served earlier in the day as a train runner and who upon completion of his work goes to the office for the purpose of figuring these tickets. He copies the price on the original ticket, the salesman having marked his price on the blue ticket which is a copy of the original. He separates the white tickets from the blue tickets and hands the blues to another man at the desk in the office. Each figures his ticket and puts down the amount. The man who has kept the white ticket enters the purchaser's name, date, number of head, weight, price and amount in a book. This is a bill book, the first page is a perforated bill and the second page is a blank white sheet on which a carbon copy of the information is made. The bill is torn out, attached to the ticket and both are sent to the clearing house. These tickets are coming in all afternoon and it keeps him busy billing and figuring. The clearing house is operated by the Kansas City Livestock Exchange. I am not familiar with the details of handling

those things in the clearing house. Some of the purchasers are paid in check, some of the packers pay by endorsing the original scale ticket on the back with their stamp. These [fol. 252] collections are made by the people in the clearing house. As they are made they are placed in the different boxes. Our man makes reguler trips there to collect these bills that have been paid. Bills rendered before 2 o'clock on a market day must be paid by 3:45. Bills rendered after 2 o'clock in the afternoon are paid, or can be paid, up until 10 o'clock in the next morning. On the slow markets it is not always possible to get but a small percentage of the bills in the clearing house by 2 o'clock. We do not wait until we receive the pay through the clearing house before making remittance to the shipper. We send out thousands of dollars before we have ever collected on the livestock. As nearly as possible we make all of our remittances on the same day that the livestock is sold. There are some cases that we do not get a load of livestock entirely sold the first day and have to hold it over until the second or until it can be disposed of. The shipper advises us as to the bank to which he wants the proceeds remitted. In our office the man who makes out the account sale does not make the remittances. He lists the necessary information on the account sale and passes it across the desk to another man who has the information relative to the remittances of proceeds and writes on the bottom of the account sale the bank to which the money is to be sent. He has a remittance form which he fills out with instructions on it at the direction of so and so to credit the account of so and so at such and such a bank with this amount. Then he will assemble the remittances that have to be made through one bank and will write a check covering that amount. The [fol. 253] check and those remittance slips are taken to the bank which is a local bank at the stockyards. These banks are open from 9 to 4 o'clock. The remittances are made by depositing to the credit of the shipper through the correspondent of his local bank and is made by check of the firm in the amount of those remittances. There are instances when we send a cashier's check for the proceeds. The firm check is used only in the instance of some drive-ins. We mail that direct to the owner.

We have a rule at the Exchange which forbids us sending out our own check except where it is requested by the

owner. The money received from the purchasers in payment for livestock is deposited to the credit of our firm. It is not entered in a separate account. In order to make remittances ahead of collections we try to keep some money on hand at the bank and we are very fortunate in having established credit with the bank. On days when we send out more money than is represented by our deposits in the bank an overdraft will result and we will pay interest on that overdraft at the end of the month.

I believe that I can safely say that in most consignments arriving at our market by truck there will be more than one owner's livestock contained in a truck. In my own case the majority of appraisal trips are made at the request of owners. There are certain territories which I try to visit every year. The people expect me to be there about a certain time and they do not send any letters requesting my [fol. 254] attendance. In most cases we receive requests to come out and look over the livestock. In the case of my firm we do not make it a practice to do a great deal of solicitation work. My father told me that I could never sell a head of livestock until I had served an apprenticeship and had learned it from the ground up. The different salesmen get their first contacts with the livestock in the country one way or another but it is a fact that most of the salesmen at this market have served an apprenticeship, started from the ground and built up. Yardmen grow up to be salesmen.

I was director of the exchange for several terms, and president for two terms. The exchange is a voluntary association of individuals organized not for pecuniary gain or profit, but to inculcate high standards of trading ethics, to enforce high moral conduct, to facilitate the speedy adjustment of disputes, to insure the patron of the market all the necessary safeguards around his livestock while they are in the market, and generally to look after the welfare of the man who patronizes the members of the organization. It is supported by assessments on its membership.

The membership at the present time pays into the exchange 17 cents per car. I think the exchange has some liberty bonds which furnish some income. The exchange supervises and has jurisdiction over the hog dockage system which is now in effect. There is a charge made for that service. The exchange does not supervise weighing.

[fol. 255] It operates a series of broadcasts six days in the week. The first four days of the week the broadcast consists of three market reports, at 7:15 in the morning, 10:45 in the morning, and 12:45 in the afternoon. On Friday there are two broadcasts, one at 7:15 and the other at 12:45. On Saturday there is one broadcast at 7:15. I am at the present time chairman of the radio committee, and have been since the service was instituted. It was instituted due to a desire of the membership to avail themselves of the opportunity afforded by the radio to get to the shippers to the market first-hand, up-to-the-minute information concerning the state of the market. In the early morning period, which consists of a five-minute report, the estimated receipts of five markets,—Chicago, Omaha, St. Louis, St. Joseph, and Kansas City,—are broadcast, and any information that the broadcaster may have of the prospects for that day's market, and any other high lights of the previous day's trade, which he may think will be information that the shipper in the country should have. At 10:45 the broadcast consists of a 10-minute period. A good many actual sales of cattle, hogs, and sheep are broadcast, and the eastern beef reports are given out at that time. At 12:45 more actual sales are broadcast. The owner's name, many times, the number of head in the consignment, and the average weight, and the price, are broadcast. The broadcaster gets just as many sales in as he can. He tries to get sales in that represent a good part of the territory. The information on the hog market is furnished by a repre-[fol. 256] sentative of the Bureau of Agricultural Economics. Mr. Biggerstaff, secretary of the exchange, does most of the broadcasting. He does not mention the name of the firm who sold the livestock. This broadcasting service has been in effect approximately 18 months. There is a definite charge made on the membership of the exchange on a per car basis to support this service. I think the truck-ins are reduced to a per car basis, and the assessment on truck-ins, handled in that way. I think that the charges are five cents per car. The charge for hog dockage is 20 cents per car. We have a splendid cooperation here between the Bureau of Agricultural Economics and our exchange, and they are always glad and willing to help in any way they can in getting true market reports to the country. The Market News Service of the Bureau of Agricultural Eco-

nomics maintains an office at the stockyards. I am familiar with the cattle end of their work. They have two employees who cover the cattle yards. These men get out in the morning, go over the yards, and look at the receipts. They get an idea about the percentage of fat cattle which is on the market on that day as compared with the percentage of other classes of cattle. They interview different salesmen of the different firms all through the yards, and obtain their ideas as to how the market is going to be that day, and how the buyers are bidding. They are always helpful in securing and disseminating information. This service extends to the hog yards, and the chief in charge of the office handles the market reporting in the sheep department.

[fol. 257] The Market News Service disseminates its information by the use of the mail, as well as by the use of the radio. The information that they give out consists almost entirely of reporting the general condition of the market, while the broadcasts of the exchange deal more particularly with special sales. The reason we do that is because people in the country have neighbors, and if one of those neighbors goes to the market with his livestock he will listen in to the exchange reports to find out how that neighbor's livestock sold. By comparison he can place an approximate value on the worth of the cattle that he has.

The livestock exchange has a rule which forbids its membership from sending the market paper free to their patrons. The rule became effective finally on July 1 or August 1, 1930. It was made effective on sort of a sliding-scale basis.

I am at the present time president of the National Livestock Exchange. I have been president of that organization since June, 1929. It comprises the local exchanges and their memberships on 27 markets, which are Chicago, Kansas City, Sioux City, St. Paul, Sioux Falls, Omaha, St. Joseph, Wichita, Oklahoma City, St. Louis, Indianapolis, Cincinnati, Cleveland, Buffalo, New York, New Jersey, Baltimore, Louisville, Nashville, Los Angeles, Denver, Montgomery, Milwaukee, Pittsburgh, Lancaster, Portland, and Detroit. The Kansas City Livestock Exchange makes a charge on its membership to cover matters involving the protection of shippers in their transportation rates. That [fol. 258] charge is two cents a car. The exchange, over

the course of years, has expended many thousands of dollars in intervening in those transportations cases which have a bearing upon the patrons of the market. The member firms contribute 10 cents a car to the maintenance of the exchange, and part of that 10 cents goes into what is known as an agricultural fund, and that money is used in different ways that contribute to the welfare of the stockmen in Kansas City's territory. The secretary of the exchange, and many times its president or other officers, are asked to attend special meetings of feeders' and growers' livestock conventions of feeders and growers, and we are called on many times to make these trips out into the country to participate in these different meetings. We also contribute each year prize money for boys' and girls' junior work in the 4-H Club, and the vocational agricultural programs. Some of the members of the livestock exchange are members of the livestock associations. I am a member of the Kansas Livestock Association, by reason of the fact that I am part owner of a farm in Kansas.

The exchange has for many years carried a blanket insurance policy protecting livestock during its stay on the market against fire. In 1917, there was a fire that destroyed hundreds and hundreds of cattle. The Hartford Fire Insurance Company gave a check for $1,737,000 for the cattle that were destroyed, and every man that had cattle in that fire which were destroyed was paid 100 cents on the dollar. [fol. 259] The insurance is paid by the shippers and by the buyers at the market. It is collected from the shipper by deduction on his account sale. It is seven cents a car. The buyers also remit seven cents a car.

The rules do not require every saleman to have a membership. One firm membership in the case of an individual, and, in the case of a corporation, the stockholders who participate in the conduct of the business, must have memberships. In the case of a partnership, each partner must have a membership. Employed salesmen do not necessarily have to have memberships. Some buy their memberships direct from the exchange, and others buy them from members who may have left the business, or who may have decided to quit and put their memberships on the market. To buy memberships from the exchange at the present time it costs $5,000, but memberships are sold for less than that where they have been bartered for among individuals. The

last time I heard of a membership changing hands I think it sold at $2,750. I think that was within the last 23 months.

The National Livestock Exchange is supported by assessments on the constituent member exchanges on a membership basis. That amount is $10 per head. That is paid out of the funds of the exchange. The Kansas City Livestock Exchange pays its assessments out of its general fund. No special assessments are made on members at Kansas City for the support of the National Exchange. There have been times when special assessments have been made by the National organization to defray the cost of certain [fol. 260] activities of the organization. This has been done in connection with protecting or defending a member exchange in the event of litigation, or it might be necessary in case the National Exchange intervenes in a transportation hearing. Those assessments are made on the local exchange, which determines how it will obtain the money.

The National Exchange maintains headquarters at the stockyards in Chicago, has a secretary, and a sanitary commissioner, who has charge of the program of tuberculosis eradication in the United States. It is active in all matters which affect the interests of patrons in these various markets constituting the National Livestock Exchange. Frequently, the secretary and the transportation commissioner of the exchange intervene in rate cases. The other purpose of the organization is to consider ways and means in which to be helpful to the feeder and grower of livestock. It was instrumental in winning the post mortem fight when the packers undertook to buy butcher cattle of the female species subject to post mortem examination.

The market agencies who sell livestock at the Kansas City market, and are members of the Kansas City Livestock Exchange, charge the same commission. I would not say that all who buy on commission have a uniform charge. No material change has been made in the rates contained in the Gore-Dagger arbitration. Those rates were agreeable to the members of the exchange. I do not recall any instances where a member has undertaken to charge differ- [fol. 261] ent rates. I do not believe that the exchange would take any cognizance of a member who charged rates different from the uniform rates. I believe the charging of different rates might result in a chaotic condition on the market. I do not think there ever has been on the part of

some patrons an appreciation of what real service means. There is a certain technique about the selling of livestock that passes over the attention of the patron. Salesmanship is far more than that, and the fine points of salesmanship are very elusive and they pass by the patrons' attention. If we had on our market firms which attempted to gain business by filing a lower schedule of rates, they could attract that business, but they would be doing a wrong to the people who patronize them. Thus, it would be possible for people without experience to get business by offering their services for less than the services of others. It is the job of the salesman to get the highest possible price. The price is not tagged on these livestock. The price must be determined as the result of trading between buyers and sellers, and the exercise of judgment. It has been my experience that the first bids placed on livestock are much less than I finally get for them. I may have to work all day, and I may have to work a week, and I have worked as long as a week selling one load of cattle. The commission man is interested in getting the highest possible price, and he is willing to work as long as it is necessary to do that. I believe that the average patron of the market is willing to pay a fair price for the service which he receives, and the fact that he [fol. 262] patronizes different firms indicates in his mind that there is a difference in the service rendered by the different firms.

It happens very frequently in our firm that we will carry cattle from one day to another because of the unsatisfactory nature of the price that we have been bid on them. In the case of firms like my own our only opportunity to hold our patrons is by getting results for them. We have men that we are serving today that my father served 30 odd years ago, and they have never consigned a car of livestock to any other firm.

I certainly would say that there was a difference between salesmen. If a man is not satisfied with the charge that my firm exacts he can ship to a cooperative organization, and if at the end of the year there is a surplus in the earnings of that cooperative he shares in a patronage dividend, which reduces the cost of that service to him. He has that alternative. Again, he can come in to the market and sell his own livestock without any commission charge of any kind. I would not think that that would be a wise thing

for him to do. I would not think that a man who is not on the market every day would know close to the value of his cattle. There are certain men on these different markets that I would rather pay a good many times the amount of the commission involved to sell my livestock than I would to have some other sell it. I do not know how you are going to hold the integrity and efficiency of these markets, and get the patron as high a quality of service as rules and [fol. 263] regulations and other ethics would prescribe, by making charges for these services in an un-uniform way.

I do not remember of ever having worked longer than a week in the sale of a load of cattle, but there have been frequent instances where I have worked, 2, 3, and 4 days. I do not believe that I am qualified to say whether the present tariff is reasonable. The present tariff was passed down to us, and we knew about what it would earn. After we applied it to a previous year's business, we had to cut our pattern to fit that. We had to pay certain salesmen less than we thought they were really worth, and in some instances we had to pay other employees less than we really thought they were worth. We gauge a salesman's worth by his natural ability. He must have a love for livestock. He should have had experience with livestock. I want a salesman to have a nice personality. I demand absolute honesty. I want a man also to be conscientious, and realize that his only objective is to give the shipment real service. I want him to see to it that the yard men are constantly on the alert. I want him to keep in touch with the customers, advise them, and give them the benefit of his best judgment and advice.

In determining the limit to what we can afford to pay a salesman, we know the kind of service that we want to give our patrons, just about what our revenue will be, and we take into consideration the attached business that a salesman may have. We have some salesmen that have a clientele of stockmen in the country, who consign their livestock to us because of the fact that that salesman is in [fol. 264] our employ. He has impressed them with his ability, as well as the integrity of the firm. That business that a man may have is considered in determining the salary which we pay him. A commission firm desires to make a profit on the activities of its salesmen. You cannot determine exactly the revenue that comes to a firm as the

result of the employment of any man in the organization. We try to remunerate our employees according to their worth to us and their worth to the men who patronize our organization. Of course, the owner of the organization, because of the many hazards which are in this business, is anxious to make something in the way of a surplus earning in the year's operations.

The National Livestock Commission Company has not grown in volume since I have been a member of it. There has been in fact a shrinking in volume. We have the same number of salesmen today that we had when I came with the organization. I don't hire a salesman on his ability to dispose of cattle. You can sell them at the best possible price as the result of the exercise of your judgment, and then there are salesmen who desire to just get the cattle sold. I don't hire a salesman because he may have ability to dispose of a good many cattle, but I hire him because I want him to put every ounce of his ability and every pound of his effort into each and every sale that he makes. The matter of volume that he sells does not have any bearing on his salary. The volume of his sales would not determine whether we would continue to carry him, even though we were carrying him at a loss. The factor would be [fol. 265] whether he was getting good prices. A reasonable volume for a fat steer salesman would depend on market conditions. It depends on demand and the class of livestock which he has to sell. It is impossible to say. I have never figured up how many cars I have sold in a year. I haven't any idea of the number. I could not say whether I have sold a thousand. I think I have sold more than a hundred cars in a year. I don't know whether I have sold more than 500. A salesman has no control of how the livestock comes to him. We have tried to spread out our business. Seventy-five per cent of the livestock of certain weeks arrives during the first three days. I have been a staunch advocate of a 5-day market, and I have worked with livestock associations or producers to the end of devising ways and means of effecting a more orderly distribution of the supplies to the market. It is a very difficult problem to solve. Every farmer wants to be free to use his own initiative and his own judgment in matters affecting his property. There have been times when we have prevailed on certain shippers to stay away

from a particular day's market, and whenever the market gets bad I may use the telephone a good part of the day, or the telegraph company, to tell people that I don't believe they ought to have their livestock here the next day or the day after that. In fact, we have customers in our firm who will not ship until we tell them to. They put in our hands that responsibility. We may tell them that things look good, and to be there the next day, and then somethings turns up that we get a slow dull market. That may [fol. 266] make the customer feel bad towards you, because he feels that you should know that.

The number of cattle handled by a salesman varies depending upon the class of receipts. There will be days when we will have a small number of fat steers, but quite a number of butcher cattle or calves. Some days we can take care of all the fat steers that come to our firm. On other days we do not sell on the day of arrival the cattle or part of the cattle that are consigned to us. We carry them over sometimes at the request of the owner. They may not fill and he wants them carried over. We dispose of most of the fat steers that come to our firm. There are instances when we may work cattle for two or three days and not get a satisfactory price and then the owner may ship them on to Chicago. If our volume of fat steers double we might not be able to take care of them. If we had control over an additional amount of business and got them in on days toward the close of the week we could handle more but there are days when we are taxed to handle what we have. I would not want to say that we could have handled more last year if the business had come in just as it did.

I don't want the farmer stockmen to pay any more for these services than they are worth to him. In my opinion they are tremendously valuable. I think a patron puts the service above the price.

It is my own opinion that advertising does not get business. In my own firm we do some advertising and it is for [fol. 267] the reason that I don't think it produces results that we don't spend more. By advertising I mean paid advertising in newspapers and magazines. We carry an ad in the Kansas Stockman largely because we want to help the association. Once a week we carry an ad. in the Kansas City Star in a column that is devoted to livestock interest at this market. In our market paper we have carried a few ads. Our advertising is usually for special occasions.

I do not know whether you would call our market reports advertising. This is a two page leaflet on the first page of which is information relative to the market for the first four days of the week and on the second, third and fourth pages we carry items of information to farmers and stockmen. We carry a report from now and then on the meat storage situation. We carry articles prepared by agricultural colleges and by the Department of Agriculture on the cattle situation, how to feed lambs and other bits of information. We set out under the column entitled "National Family News" information in regard to the sales and purchases we have made during the week. We have inquiries from county agents, bankers and vocational teachers for this information. We do not budget the expense for advertising. We do not budget any of our expenses. The expense for advertising is determined solely by what in my opinion appears to be consistent with the operation of our business.

The expense for telephone and telegraph service is subject to certain limitations imposed by rules of the Exchange. When a man ships us a load of livestock and does not ac- [fol. 268] company the shipment we will either telephone him or telegraph to him the information concerning the sale. If we have a customer who is a prospective purchaser of livestock we can either telephone or telegraph him at our expense advising him of a favorable time to buy. The telegrams and telephone messages carrying information as to sales and purchases made are sent at our expenses. We can also pay the cost of transmission of the telephone or telegraph message where we desire information from certain people. We can also pay the cost of messages sent by patrons announcing that a shipment will arrive. We cannot wire or telephone a customer at our expense telling him to ship his livestock. We use the telephone and telegraph for the purpose of obtaining market information from other markets.

The Kansas City Livestock Exchange has certain restrictions and qualifications which they require of their membership. The Board of Directors put the qualifications high enough so that only those who are qualified to go in business are admitted. There have been instances where men have been forced out of the Exchange and have been re-registered and allowed to continue in business at the

yards; not as members of the Exchange. There is no numerical limit on exchange members. It is smaller than it has been in a number of years.

There is a difference between the different markets in a good many different ways. The character of the lay out of the market enters into the cost of operating and many other things will come in to consideration which characterize the different markets. I have never known in my experience a man shipping to one market as against the other [fol. 269] because of any difference in the commission charges. He selects his market with a view as to where he can expect to receive the best price for his livestock. It is my opinion that the rates at Omaha are lower than our present rates. We do not handle enough business from the territory which is competitive as between Kansas City and Omaha to know whether the lower tariff at Omaha has caused any change in the flow of livestock as between Omaha and Kansas City. The Omaha market has shown an increased volume in their hog receipts and I understand that has been mainly because of the elimination of direct buying by packers of hogs in Nebraska.

Cross-examination:

The percentage of commission received by those doing business at this market to the gross valuation of the livestock handled represents .85 of one per cent. A graph has been developed from the figures received from the Packers and Stockyards Division showing the relative percentage borne by gross commissions, to gross sales, and purchases, during the years which the present tariff has been in operation.

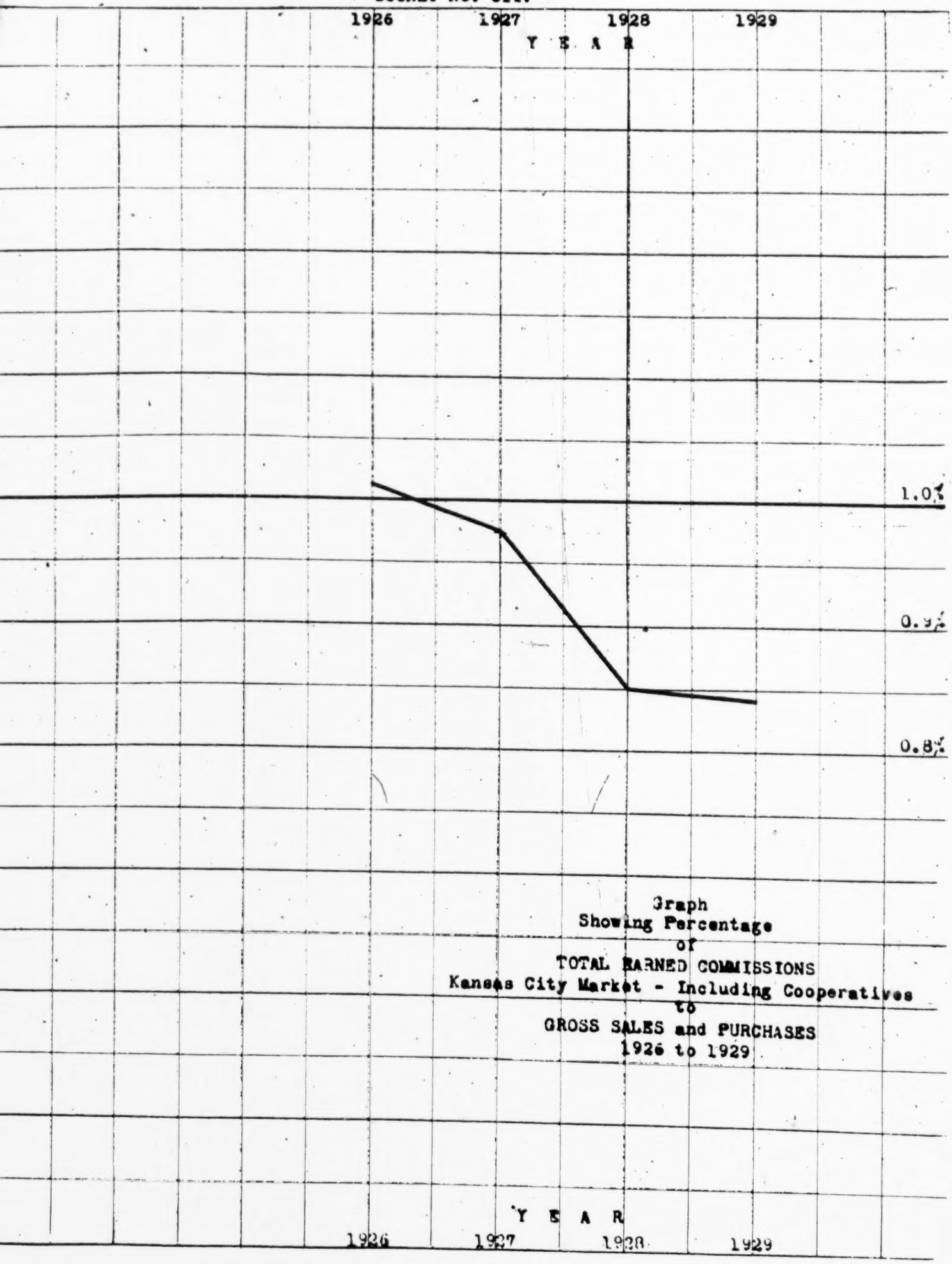
Respondents' Exhibit No. 1

This exhibit consisting of two sheets was received in evidence.

(Here follow 2 photos, folios 270 and 271.)

BEFORE THE SECRETARY OF AGRICULTURE
BUREAU OF ANIMAL INDUSTRY
DOCKET NO. 311.

Exhibit A 1
a



Graph
Showing Percentage
of
TOTAL EARNED COMMISSIONS
Kansas City Market - Including Cooperatives
to
GROSS SALES and PURCHASES
1926 to 1929

Respondents' Exhibit No. 1

2224

BEFORE THE SECRETARY OF AGRICULTURE
BUREAU OF ANIMAL INDUSTRY
DOCKET NO. 311.

Exhibit A 1 b

RATIO OF EARNED COMMISSIONS

to

GROSS AMOUNT OF SALES AND PURCHASES

KANSAS CITY MARKET - INCLUDING COOPERATIVES

1929

Year	Gross Amount of Sales & Purchases	Commissions Earned on Sales & Purchases	Ratio of Commissions to Sales & Purchases
a	o	c	d
1926	$239 834 931	$2 696 442	1.0110 %
1927	236 500 761	2 306 016	0.9751 %
1928	281 158 876	2 389 001	0.8497 %
1929	275 163 457	2 313 443	0.8407 %

[fol. 272] At the inception of the present schedule the gross commissions bore a relationship slightly in excess of one per cent to gross sales and purchases. This percentage has been constantly declining until the end of the year 1929. I have not noticed any relative increase in volume of business at the Kansas City market as compared with other markets during the period in which the graph reveals that this percentage was declining. I understand that there has been a steadily increasing volume of drive-in receipts on the Omaha market. I understand that the Omaha tariff is higher than the Kansas City tariff and I understand that a relatively larger percentage of hogs within the truck radius of Omaha is now reaching that market under the higher tariff than formerly existed, as compared with the percentage of the number of hogs or other livestock within that radius, that reached the market under the lower tariff. Differences in the amount of commission charges do not affect the relative movement of livestock for the reason that the owner of the livestock is seeking the market that will provide the highest price for his livestock and the market that will be most economical for him to ship to from the standpoint of transportation costs. The transportation costs are a much larger factor in his total costs than the commission charges. In the matter of the movement of livestock from the unloading chutes where trucks are received the distance is greater in the instance of many organizations operating at Kansas City than it is at some other [fol. 273] markets. The unloading chutes where drive-in cattle are received are at the extreme north end of the stockyards area in which cattle are handled and there are firms located at the extreme south end of the yard that receive drive-in cattle and calves that require a drive of half a mile or more. This condition is dissimilar from the condition that exists at some of the other markets where drive-in livestock is sold adjacent and contiguous to the unloading chutes. At some other stockyards the stockyard company employees deliver the livestock to the commission firms. On account of the vast territory from which the Kansas City market receives livestock a salesman must have a more extensive knowledge of the different classes of cattle which originate in these various states. In my opinion there are more different classes of livestock received here than at any other market in the United States. The salesman must know the characteristics and types of the different classes

of livestock. I think the buyers for killers will tell you that the Kansas City market is the most difficult market in the United States upon which to buy killing cattle for the reason that we have so many different kinds of cattle coming here and these cattle are fed every known feed under the sun. We have pulp fed cattle, grass and grain fed cattle, grain fed cattle, grass fed cattle fed on grass with a little cake, cattle from the oil mills that are fed on cotton seed meals and hulls, barley-fed cattle and wheat-fed cattle. It requires expert judgment and even the most expert will make a [fol. 274] mistake once in a while. The salesman keeps in touch with his patron and may go out to his feed lot and see how he is feeding his cattle. This gives him quite an advantage over the buyer. If he makes you a pretty go-d bid on a bunch of cattle you are going to let him have them and then he tells you about it later.

Some packers require their buyers to go into the coolers and look over the beef that they have purchased on the day before. That is quite an advantage to them in that respect. I have had the opportunity to visit the coolers of the packers and look over the different grades of beef. The buyer studies the dressing percentages of the livestock which he has purchased. The different methods of finishing or feeding cattle will produce different market values. These differences are very difficult to detect. Cattle of generally the same appearance as to breed, age and weight have a wider range of value at this market than is customarily true of the run of receipts on other markets. It is quite essential that the salesmen on this market have knowledge of the way cattle have been handled. The buyer takes into consideration both the quality and the dressing percentage as well as the demand for the particular class of livestock. There must be a certain specializing because that benefits the owner. If one salesman had to sell all these different classes it would be much harder for him to specialize in his judgment on the respective merits of the different classes.

[fol. 275] It is very essential that a salesman know something of the actual conditions under which these livestock are grown and produced. If all of the receipts of livestock coming to my firm come out of Kansas and Missouri rather than out of 10 or 12 states it would be much less expensive for me to carry on the business but because of the fact that our services are requested by owners of livestock at points in Texas and other points further away from the market

than either Kansas or Missouri it is quite plain to us that it would be less expensive for my organization. We have no control over that. We keep in contact with men in states as far East as Ohio and the men in the south of Texas and with men on the western slope of Colorado and with men in Iowa.

Slaughter cattle are purchased on this market by buyers located as far east as the eastern seaboard, as far north as Michigan and as far south as Texas, and by buyers to the west of us. The demand is diversified. It is not unusual on a market day for buyers to purchase slaughter cattle and ship them into as many as 20 states. Some cattle have moved west but I do not know how far. That market is best in my opinion which has the greatest demand centered in it.

The Livestock Exchange uses its funds to gain contacts and to make trips from the market to packers located all over the country with the idea of telling those who have never used the Kansas City market of its advantages. The Kansas City Stockyards Company sends representatives [fol. 276] into that territory several time- a year with the idea of trying to interest new orders in coming here. The market would slowly die if you did not keep maintaining these contacts and trying to get new demands. The Kansas City market stands at the gate-way between the great producing areas of the south and southwest and west and the corn belt and feed lots of the east and north and west.

The Kansas City market is the first market in the United States in receipt of stocker and feeder cattle. They are as variable in breeds, origins, weights, ages, quality and condition of flesh as the shades of color. After purchase they go north, east, south and west of Kansas City. They have gone as far east as Pennsylvania.

The Kansas City Livestock Exchange has contacts with radio broadcasting station- situated at several different points throughout the great corn belt or feeding district of this country and it furnishes market reports concerning the trade in stockers and feeders to these stations which are broadcasting daily during the seasons when we have big supply of stockers and feeders at the market. The list of patrons whom we keep in touch with at the market is practically as large among those who buy cattle on this market as those who sell cattle. You never saw a good

auction sale where there was just one buyer. The more buyers you draw on the market the better your market. The volume of stockers and feeders at the Kansas City market do materially constitute the peak movements at the market. Climatic conditions and all of these things enter [fol. 277] into the matter of when livestock comes to market. The personnel of a firm must be trained. They must have knowledge of operations on the stockyards if they are going to fit in an organization and render good service. You cannot put a man in the market down there and put him right to selling cattle unless he has had some experience some place else. That is one thing that furnishes a real problem to firms that have a seasonal business. They want to have their forces during the season that they do have the big peak of their business and they want that force trained and capable of handling these big loads. In order to render good service they will want to keep them the year round. I certainly make an effort to operate our business as economically as I can with the assistance of my partners. The greater the territory, the greater the expense.

Direct buying is the acquiring of livestock in the country and away from the markets. As applied to hogs, it means the acquiring by packers of hogs direct in the country. It has a real effect of reducing the volume. That is one of the real problems we are up against here at Kansas City, right in the heart of this direct buying movement, with practically all of the big four packers engaged in it. Our market receipts of hogs are falling off from year to year.

I do not know of any other market, with the exception of St. Louis, where the direct buying of local packers is relatively as large as at Kansas City. The packer who receives hogs direct can get in telephonic communication [fol. 278] with his buyers in the country in a very short time. If he does not want hogs, they ship on the open market. When the packer gets in that sort of a situation, and they throw those hogs on the market, which would ordinarily go to him, it is just too bad. We try to keep ourselves prepared to handle the peak whenever it comes.

Respondents' Exhibit No. 2

Respondents' Exhibit No. 2 is a copy of the report of the Committee on Agriculture and Forestry of the United

States Senate, in Calendar No. 1272. This exhibit was received in evidence.

The relative volume of this direct buying of hogs by private stockyard operators and others, as compared with market receipts of hogs at this market, has greatly increased within the last 10 or 15 years. In my judgment, it is not influenced by the amount of commissions paid for sales on the open market. I have the opinion that the movement was instituted to hold down the price of live hogs on the market, and probably to maintain shipping differentials between St. Louis, Chicago, and Kansas City, as against an increasing Western competition for hog products. It is generally understood that the Kansas City prices, as established on the open, competitive market, through sales made by market agencies, and purchases made by order buyers, is the price basis used by the packers in making their direct purchases in the country. The packer buyer, who marks the price on the hogs received direct, comes to the open, public market, and gets the different prices prevailing on the open market, and marks [fol. 279] the hogs in his private pens on the basis of the prices paid on the open market.

The existence of the Kansas City central, competitive, public livestock market does not place any impediment in the way of growers and producers of stocker and feeder cattle with respect to the direct sale of such classes of cattle to the feeders and finishers. We have been of assistance in many instances in helping our customers buy cattle in the country. There is no requirement of law or practice that compels the movement of cattle through the Kansas City market. The owner can dispose of them in the country or on the market, as he pleases.

The competition existing between market agencies at the Kansas City market is very keen, and every firm is on its toes trying to make sales that will impress another fellow, and perhaps gain that other fellow's patronage by the merits of the particular work that he does. The exchange, through one of its rules, places limitations on the amount of time that a member can spend in the country or away from the market on business. The purposes of that particular rule are to limit the expense of members' operations in the country. Furthermore, he is required to spend 15 days of each calendar month on the market, for the purpose

of keeping himself informed. We do not like to have men going out into the country appraising a farmer's livestock who do not have a contact with the market. That rule applies to all those who are interested as owners in the various organizations which may happen to be members of the Kansas City Livestock Exchange.

[fol. 280] The cooperative commission agency has an advantage over the socalled old-line market agencies, in that their members who ship to their firm or to the market, in many instances, are solicitors for the firm, for the reason that as they increase the volume of the cooperative's business at the market it also has a tendency to increase the patronage dividend that may be available. There is no limitation on their solicitation of additional memberships or business in the country. The present rule has been in existence for a great many years. If there is any surplus in the accounts of the cooperative organizations, they refund patronage dividends. The stockman who patronizes the market has the privile[illegible] atronizing whatever concern he sees fit. Whether it be cooperative or old-line agency, or sale by himself.

There is a great amount of competition existing between markets, and it seems to be increasing all the time. As I go about the country, it seems to me that I find more men present in the different territories that I visit, from other markets, than I used to years ago. I am told that some of the other markets competitive to Kansas City have extended their rules in regard to members going out to the country. I do not know of any business that is any more competitive than this business in which I engaged.

We have at this market what is known as the "Market Practice Agreement," which is an agreement entered into between the Kansas City Livestock Exchange and two other subscribers, which are cooperative agencies at this [fol. 281] market, and by subscribing to the terms of this agreement they can avail themselves of the functions of the clearing house and of the facilities of the hog dockage system. The expense of these facilities to the subscribers to this trade practice agreement is the same as for members of the Kansas City Livestock Exchange. Any market agency under those conditions can be a subscriber to that agreement.

Respondents' Exhibit No. 3

This exhibit, which is a copy of the market practice agreement, was received in evidence.

The Kansas City Livestock Exchange maintains the clearing house, and supervises and maintains the hog inspection service. Some years ago the only parties who could avail themselves of those services were members of the livestock exchange. From the viewpoint of the cooperatives, it was desirable that they have access to those services, and they also complained that they were not being traded with freely by certain members of the exchange. A complaint was filed, and a hearing was held. About that time the exchange expelled Dell W. Hubbard from membership because of a shortage in his accounts. Even though he made up the shortage, we did not consider that a man who would use proceeds belonging to his shippers was a fit member to be on the market. A few days later he registered as owner of the United Livestock Shippers Association, which he tried to conduct along cooperative lines. He also was one of the complainants in the complaint I mentioned a few minutes ago.

Market agencies at the stockyards have a greater security [fol. 282] when dealing with members who are under certain rules and regulations and are under bond to the clearing house to pay their bills promptly. We have a great responsibility to our customers to remit to them the proceeds of this livestock, and we want to have the best assurance that we can that we are going to get paid for what livestock we sell.

Under the rules of the exchange, the creditor holding a market obligation has a first lien and preference ahead of all other creditors with respect to the value of the exchange memberships held in the firm or by the membership of the firm which defaults in the payment of market obligations. During the course of the hearing held before the then Secretary of Agriculture with respect to this demand of these non-member firms, this statement of rules and regulations was developed, as shown in Respondents' Exhibit No. 3. One of the provisions of this agreement is that in addition to obedience to established market rules, there would be established through a deposit of securities acceptable to the committee a guaranty that would be approximately equiva-

lent to the value of the exchange memberships. The Farmers Union Livestock Commission Company withdrew from the complaint before the hearing was concluded, and accepted this arrangement. It has operated under it since. The Secretary of Agriculture issued an order after the hearing which was reviewed by the court. The effect of the modified order of the Secretary of Agriculture was to require the exchange and its membership to admit any registered market agency to the use of its facilities on the same [fol. 283] terms in effect as those facilities were used by those firms holding memberships in the exchange, this permission to be conditioned on the deposit of guaranties substantially equivalent to those given in the form of exchange memberships and agreements to abide by the trading rules recited in the rules and regulations of the exchange, which were outlined in Respondents' Exhibit No. 3. The United Livestock Shippers Association did not qualify under that agreement.

The situation in regard to the entrance of new organizations in the business since the decree of the court, and after the formulation and adoption of this market practice agreement, has been that any market agency, registration of which is accepted by the Secretary of Agriculture, can, through entering into this market practice agreement, and binding itself to follow the usual and ordinary rules of trading, and depositing the guaranties required by that agreement, and giving the bond required by the Secretary, do business on that market.

(In response to a question by counsel for respondents, counsel for Government stated that for the purpose of this proceeding it would be admitted that while, in his opinion, the Kansas City Livestock Exchange probably has power and authority to limit its own membership as it sees fit, it has no power or authority by any lawful means to limit the number of people who may do business on the Kansas City stockyards as market agencies or dealers.")

There has been a considerable reduction in the number of [fol. 284] memberships since the time when I was last a member of the board of directors. I do not know of any way in which the exchange or the respondents could lawfully limit the number of market agencies operating on the Kansas City market.

In recent years we have had increased competition from agencies that have been set up in the market. We have a great competition at the present time from a competitor that is subsidized. We have this new competitor in front of us, which has the advantage of Government funds, and the advantage of having a publishing company which publishes information in the interest of that particular organization. We have on our one flank direct buying, which is continually cutting down the volume of livestock received at the markets. Then we have had competition in recent years from county agents who have employed themselves in soliciting and obtaining customers for these cooperative competitors. This new competition has made the maintaining of our business increasingly difficult, and has increased expenses in my organization, by reason of the fact that loans have been made by at least one of these cooperative organizations, and the fact that my own organization makes practically no loans. I refer to the National Livestock Publishing Company, which is a subsidiary of the National Livestock Marketing Association, capitalized by the Federal Farm Board. It is my understanding that through Government aid it has been established with a capital stock of $110,000. It is my understanding that the publication goes out free of subscription price to the patrons of the particular market [fol. 285] agency.

I know that money is expended by that organization in setting up outdoor advertising signs along the highways through a part of the territory of this market. I was approached by a representative of an outdoor advertising concern, and was offered a contract that would place the National Livestock Commission Company's signboards in front of different farm homes. I think the price was 40 cents a sign per year. The agency which I refer to, the Producers Commission Association, has these signs on many highways radiating from this market. I have second-hand information to the effect that the Producers Commission Association had accumulated a deficit prior to the year 1929.

I have attended a national meeting of the National Chamber of Commerce, and am familiar with a certain letter written by the chairman of the Federal Farm Board, Mr. Legge, to Mr. William Butterworth, president of that organization.

Respondents' Exhibit No. 4

After reading a portion of this letter, the letter was received in evidence.

My information is that Mr. C. B. Denman is a member of the Farm Board, assigned to the marketing of livestock. I am personally acquainted with him, and have heard him on several occasions express his ideas with regard to the marketing of livestock. I heard him make the statement that he thought there was too much competition on the selling side in the public market. He and I do not agree on that [fol. 286] point. His idea is that there should be only one cooperative selling agency on a public market, and carrying out his idea that there is too much competition among sellers it is his idea that the number of market agencies engaged in the handling of livestock should be reduced. It has always been my opinion that where you remove competition on the selling side you will eventually remove competition on the buying side. These markets were established on the basis of both competitive buying and selling. If the selling were made non-competitive, I believe that the buying of livestock would also become non-competitive. Under such a situation it is my opinion that the buyer would have the advantage, for the reason that livestock is a perishable commodity, and it would be quite unnatural if the buyer, appreciating that fact, did not take advantage of the situation. By withholding his purchases, the single buyer could name his own price, as the situation would result in the disintegration of the market. I cannot see where there would be any place in the picture for an organization such as I represent. I think the effect has been indicated already in my own business in the loss of some customers that I had served prior to the time the Federal Farm Board came into existence and adopted the policy which they now have in effect with reference to livestock.

If the Department of Agriculture should cut down my income and exclude from revenues the funds necessary to counteract the use of these Government subsidies, the business would be more difficult to maintain. Some persons who had been our customers are now utilizing them. We have [fol. 287] no control over where a man can ship his livestock. The biggest gun we have in our battle to maintain the patronage is the gun of real efficient service, and one that will impress its value on the man who receives it.

For eleven months, this year, our standing among all the firms at the market is one firm better than it was the previous year. Our 1929 business was less than our 1928 business and our business for eleven months of 1930 shows a decreased volume under eleven months in 1929. The big bulk of the shrinkage was caused by the loss of a few customers who handle a large volume of business. We failed to receive the business from these parties this year by reason of the fact that they shipped the bulk of their cattle to the St. Louis market. The main reason they went to St. Louis was that they thought that they could get a better price. I think the owner of livestock pays quite a little attention to transportation costs in determining a particular market that he would patronize. The development of competitive livestock markets at point such as Wichita, Oklahoma City, Fort Worth and St. Joseph has had a tendency to intercept livestock that would otherwise come to Kansas City. We are subject to that inter-market competition.

There have been no instances of losses to shippers in the last 10 years at this market. I have been informed by representatives of the bonding company that handles the bonds for the members of the Kansas City Livestock Exchange that the fact that that safeguard, as well as other [fol. 288] safeguards which have been thrown around the business by the rules and regulations of the Livestock Exchange, was the determining factor in securing a premium rate on their bonds which I understand to be the lowest in existence at any market in the country. That rate has tended to reduce our costs.

The method of remittance requires the employment at this market of a relatively greater amount of capital on the part of the market agencies. We have a rule in the Exchange that requires that we make remittance of proceeds within 24 hours after completion of the sale. Many times we make remittance on the day of the sale. We remit the money directly every day to the owners of the livestock in the country before we have collected the money which represents the purchase of the livestock.

I think that attached business is a value to a market agency because it increases the volume of that market agency. It takes money, time, effort and plenty of hardships to build up an attached business. I think that the

item of attached business should be given consideration in determining rates and charges which we are allowed to collect.

There are a number of hazards attaching to this business and I have made efforts in the past to get bonds that will cover some of these hazards but I have not been successful in all instances. We sell large numbers of livestock to the four big packing concerns and they are not bonded. We have a hazard incident to the sale of livestock that may be stolen. There is a hazard incident to the sale of mortgaged [fol. 289] livestock and my organization has one lawsuit pending against it for $10,000 by reason of the fact that we remitted the proceeds of sale and it turned out later that the loan was taken direct by a bank here at Kansas City. Several months ago a steer got out and injured several people on the street uptown. That market agency is now being subjected to several lawsuits. We are responsible if the [fol. 290] correct amount of freight is not collected. It is not unusual for wild animals to be received in shipments to the market and many times injuries occur to different employees or owners of the business. We sell livestock to strangers and accept their checks. We have the hazard incident to the failure of our depositing bank, that is the banks with which the shipper does business. We have another hazard in instances where we may purchase livestock that are not in the most healthy condition. I understand Missouri courts have held against firms at this market in the past for the reason that they purchased livestock for their customers and upon its arrival in the country it proved out that they were not in a healthy condition. We have the hazard in this business of collections on livestock purchased for persons in the country where the banks may fail. The hazard relative to the sale of stolen or mortgaged livestock is insurable. I know that one of the insurance companies of this country writes a policy covering the sale by market agencies of stolen or mortgaged livestock upon which a certain per-car charge is made. We have carried that insurance. We did carry that insurance but dropped it for one year for the reason that it was not the kind of contract that we wanted. It contains a clause that requires the exercise of diligence on the part of the market agency. We did not carry that insurance during 1929.

I have reason to believe that there are probably other hazards of our business that a policy can be written on but at a rate which would be quite high and perhaps prohibi-
[fol. 291] tive. I have had information that if a contract of insurance without the limiting clause as to the exercise of diligence were written it would require a premium of 50 cents per car. They would not agree that it could be done but there was a possibility. I have been informed that all persons are assumed to have constructive notice of mortgages recorded on livestock wherever the livestock in question might be situated. In view of that fact it would be a serious question as to whether in event the selling agency had not examined the particular records of the county out which the livestock came liability would attach to the insurance company in event of loss due to the sale of mortgaged cattle. Insurance can be had covering liability imposed by law on market agencies arising out of injuries to employees or the public. In the particular case where an action was instituted against my firm last year arising out of the sale of mortgaged cattle our firm remitted the proceeds immediately in the usual course of business to the Minneapolis National Bank of Minneapolis, Kansas, and it subsequently developed from an examination of the records in the office of the Register of Deeds of that county out of which the cattle came that there was one recorded mortgage unsatisfied of record for $25,000, the notes secured by which being payable at the Minneapolis National Bank. Nevertheless we were confronted by this lawsuit brought by the Liberty National Bank of Kansas City, Mo., in which it is alleged that the former notes had been satisfied although not released of record, and that a new mortgage had been executed of a later date and recorded.

[fol. 292] I do not believe it would be possible to examine the condition of the title in the case of each shipment. We try to exercise a very close contact, as well as a close supervision over the remittances of livestock. We contact in our trips to the country not only the feeders of livestock but also the banks. We obtain information on these visits that is beneficial to us.

I was informed by a member of Cassidy Southwestern Commission Company recently that that firm was held liable in a suit by the Santa Fe Railroad where the freight

rate clerk had incorrectly quoted the rate and the shipper had become insolvent. I understand that if a commission firm files notice to the effect that it is simply serving as agent to the shipper that that constitutes due notice and relieves him of responsibility.

The National Livestock Exchange was active in sponsoring the passage of the Newton Bill providing for that arrangement. I understand that blanket notice is not acceptable to transportation companies at this market and that they are demanding a separate notice in respect to each individual transaction, so the question remains undetermined whether notice that has been given by the various commission firms to the railroads meets the requirements of the Newton Bill. The commission company is liable if there is an incorrect calculation of the total amount of freight by the employee of the commission company resulting in an undercharge.

When a stockman ships to a cooperative organization I think many of them feel that they are members of that organization and they pay their employees a salary. In the [fol. 293] case of the old-line market agencies the patron employs his agents on a fixed charge. The patrons of the cooperative share in the surplus at the end of the year's operation. We strive to conduct our business with as great economy as is possible and still maintain the character of [fol. 294] service which we desire to give to our patrons. We derive the benefit of all the efficiencies of method and system of procedure that have been built up by the past experience of the Exchange. Contracts of sale are closed sometimes by a nod of the salesman's head or the motion of his whip or his cane or his spoken word, "I will sell." If we had to draw up contracts in closing up these different sales we make we never would get through. There is a rule of the Exchange that stands behind these trades that are made and in the event the buyer or seller does not go through with the contract the trades are enforced because of the regulation which the Exchange exercises over members. The same thing is applicable to non-members of the Exchange under the market practice agreement. The benefits of the efficiency of method and expedition of sale and purchase are passed on to the customer; the same is true of all the other rules of the Exchange except in the instance of fire insurance and hog dockage.

My father devotes the major part of his time to the purchase of livestock for some of our customers. We still have men coming to us for whom he has been buying cattle for 25 or 30 years and when they come they want him to assist them in selecting their cattle. He is also active practically every day and we confer with him at different times with reference to the market and the different livestock that we have to sell. Besides myself the other owners interested in my organization are my father, my brother, Frank J. Morgan and C. M. Adams. My father came to the Kansas City stockyards in 1878. Mr. Adams spent his early boy-
[fol. 295] hood in the yards. His service aggregates approximately 35 years. Mr. Morgan's service on the yards will approximate 27 years. My brother's service will aggregate about 17 years and in my own case, approximately 20 years.

Excluding unpaid losses represented by lawsuits heretofore referred to, the total return to the five owners above expenses in the year 1929 was $40,600. Our firm ranged fourth or fifth in volume in that year out of 60 odd different organizations. My own individual return was $6,014. When we started out the year my drawing account was set at $5,000. When we bumped up against this big lawsuit we deducted each month so much from the drawing account to put into a reserve fund. This deduction from my salary was about $78 per month. If the lawsuit happens to be decided against us the drawing accounts will be reduced approximately 25 per cent. There will be some quite material reductions in the drawing accounts of our owners going into next year. Business has been less this year than it was in 1929. It has not been finally determined whether we will keep up the salaries of our employees to the present level but we want to do the best we can. I testified that we were going to put on an extra night yardsman.

Redirect examination:

I do not know whether the commission firms pay higher salaries to their salesmen than are paid at other markets. I do not know whether they employ more salesmen to handle the same volume than at other markets. We would not dare to employ separate salesmen to sell cattle so fed on
[fol. 296] the different kinds of feed. That would be a dead give-away. We want to keep the buyer in doubt all

the time. When these buyers come to us they throw a sort of a smoke screen to try to cover up their real desires and their real orders, and we have to sort of penetrate and get under that smoke screen. I do not think that there is any market in the country where just one particular class of livestock is marketed. I think the variance is greater at Kansas City than at the other markets. I think there are other markets in the country where more high-priced cattle are sold than at Kansas City. I mean a greater number of high priced cattle that are well finished.

Whenever my presence is requested by some customer I try to get away and visit him, and during those trips I take advantage of the opportunity to gain knowledge regarding the cattle situation in that locality. For several years I have been invited annually to attend the State Bankers' Convention in New Mexico. Either before or after I will try to arrange to have a few days to get around over the country, and talk with people from the State and other States. On these trips I might look over some cattle. They are usually made at my expense. I have been in Arizona, but do not go every year. We have men at the market who go to Arizona every year, and to a great number of Western States. I make an annual visit to different meetings held in the State of Kansas, and occasionally in the State of Texas. In my own case the trips that I make are confined to an area, I would say, some 400 miles from the [fol. 297] market. We divide that up to some extent, and my partner makes an annual trip to Colorado, and many trips during the course of a year down into Texas. Some years I will go to Colorado, and he will also go to Colorado. We have no set rule on that. We go as occasion demands.

Traders who purchase stocker and feeder cattle at the Kansas City market and re-sell them will buy from one head to a carload, and sometimes more than a carload. As a general rule, I think their purchases run more to units less than carloads. Frequently, we sell several units to the same trader on the same day.

I think the information will show that the receipts of hogs at Kansas City are falling off. It is my information that the production of hogs in this territory has been on the up grade. By recent years I mean during the last four or five years. Within that time direct buying by packers has increased. The inter-market competition is very keen.

The Wichita market is making a bid for hogs out of Kansas. I have some friends in the country who do ship direct to the packers, and they have told me that at certain times a packer to whom they consign will call them up and tell them not to ship any hogs, and at other times they will call them up and tell them, "We will take as many hogs as you have." We have a customer in Kansas who ships several hundred loads of hogs a year. Most of them go direct to the packer. The only time that we get to sell any of the hogs, is when he has received a telephone call from his packer that he does not want the hogs.

[fol. 298] I do not know of any particular days when there were serious peaks in the hog receipts at Kansas City caused by the cessation of direct buying by packers. We have two hog salesmen in our firm. They handle the hogs that arrive to our firm whenever they come. I consider that Kansas City is the basing market for stockers and feeders. The main reason that people from Ohio and Pennsylvania come to Kansas City for stockers and feeders is because they cannot get the kind of cattle they want closer to home. The prices paid for fat cattle at Chicago are a certain determining factor in the prices paid at Kansas City. We usually figure that they try to maintain that differential between the two markets that would be incident to the transportation costs. The packers watch those things very closely, and I think they intend to center their demand at any point where their buyers are located, depending on the price level in effect. The market does not stay out of line very long. A market depends on its volume as to whether it is a high cost or a low cost market. As your volume increases your unit costs decrease. Direct buying at Kansas City decreases the volume of livestock that the commission men handle. We have to have volume, and that is the thing we try to maintain at all times. It is not the cause of the decrease in volume, but the fact of the decrease in volume which affects our prosperity.

The charges under which we operate at this market were made by representatives of the Packers and Stockyards Division of the Department of Agriculture, and they are cer-

[fol. 299] tain fixed, specified charges, and we follow them. I understand that we are permitted to file with the Secretary of Agriculture an increased charge. We have not followed the policy of filing an increase in charges whenever

the volume decreases. Packers who buy at the Kansas City stockyards could restrict their purchases and cause congestion, and I think that has happened. We like to see a good, active demand from all sources, because when that is the condition we can realize higher prices. Hogs are the only species handled at the Mistletoe stockyards. Competition on a stockyard has a tendency to increase prices which are obtained for livestock, because where you have competition among sellers you have that ever present desire of the salesmen to obtain better results than his neighbor might obtain. A good many times we obtain more than the purchaser wants to pay. Your salesman is always resisting those lower prices. A good many times the purchaser has orders to buy lower, but the salesman's effort has to resist that. Last week I handled two loads of cattle for a man in Kansas. I asked a packer buyer 11 cents a pound for them. He bid ten and a half and left me. I got another packer buyer, and he bid 10.75, and then I got another packer buyer and he bid 10.85. I appreciated the fact that I was getting close to the value of those cattle on that particular market day. I came pretty close to accepting that last bid of 10.85. As I was walking down the alley, I met the buyer who had been in the pen first. He asked me if I wanted to sell them to him, and I said I absolutely did not. When he asked me why, I said that it was because [fol. 300] I was bid 35 cents a hundred more than he had bid me. He went back to look at them, and I stood pat for my 11 cents, and just missed ~~the~~ mark by five cattle, which I took out at a dollar a hundred less, which made the cattle average just about 10.90. That was competition among the buyers. We are very rarely satisfied with the best price we can get, but it is just not in the trade to get more for them. That is how trading makes the price. I think a single seller on a market would develop a single buyer, for the reason that it would be very unusual to see centered on a market where there was just one selling agency a great buying demand. If you are the only merchant in a town that had a particular class of goods, and I have need for that particular goods that you sell, I could go across the country a short ways to another point where there would be other merchants that had that class of goods. The tendency would be for me to go where I could have the benefit of a selection. Of course, buyers

could divide up the time so that only one would buy on a given day on a market where there are more than one selling agency.

I have worked for both the so-called small firms, handling a medium sized amount of business, and I have also worked for a large firm. I haven't had any greater difficulty in disposing of my livestock in one as compared with the other. I would not say that a firm which has a large percentage of livestock of a given species and grade would be in a better position to obtain a good price than a firm which had such a small quantity of livestock that the buyer could afford to ignore that firm,

[fol. 301] I think that the members of cooperatives do more real soliciting.

I think that the question as to whether it would be desirable to prevent an increase in the number of commission firms doing business on the Kansas City market could only be determined as the result of actual experience. There are people in the country shipping to all market agencies now in existence at Kansas City. They necessarily must have a certain patronage or otherwise they could not keep their doors open. I think that it is a problem that rightfully belongs with the livestock owner himself. As long as there is a demand for the services of all these firms here I cannot conceive of any way that they could be limited or restricted, I am not qualified to say as to whether or not fewer firms would be desirable.

I believe that competition in selling is a highly desirable factor in public livestock markets. By saying that the Producers Commission Association was subsidized, I meant that they had at their disposal certain Government funds which are not at the disposal of my own organization. I do not have knowledge of just how they do come into possession or use of this money. I do not know whether it is a loan on which they have to pay interest, or how they get it. I have had customers come to my office and ask me if I could obtain finances for them at a rate of interest they could obtain it from a cooperative organization, and on learning the rate is six percent at which they could borrow the money from the cooperative I had to tell them that I [fol. 302] did not know where I could go. I could not show any particular items of expense that have been incurred

by my organization by reason of this competition. Some of the market agencies at this market make loans. I do not know whether the business of lending money is as extensive as it used to be. I do not know whether the Producers Commission Association pays for the advertising done by the publishing house connected with the National Livestock Marketing Association. The total volume of the Producers Commission Association is less than of my organization. The Farmers Union has a larger volume than we have.

I do not know of any firm at the Kansas City market which has lost money on account of the fact that the four large packers are not bonded. I recall one small packer that was forced to the wall who owed quite a lot of money to different market agencies, but he happened to have a bond which covered the loss. We have suffered losses by reason of some of these hazards. We shipped livestock for a party in Ohio, and on arrival of the shipment he refused to honor our draft. We were forced to take charge of the load of cattle and ship them to Chicago. It resulted in a loss of somewhere from six to seven hundred dollars. That has been within the last five years. In another instance we bought several hundred steers from an Iowa party, which were on feed in Kansas. When we cleared up that deal there was a shortage of some twenty-six hundred dollars, and we have never been able to collect that amount from the man for whom we made the deal. That has been within the last few years. Those two instances I recall. [fol. 303] I might, with some investigation of our records and books, have some more for you.

In connection with our purchases for John Morrell, we have to have capital or credit sufficient to pay for these purchases. They don't know the amount of their purchases. Some weeks they don't purchase anything. The law suit with the Liberty National Bank, in respect to the livestock which we sold, the proceeds of which were remitted to the Minneapolis bank, we expect to win that suit.

There have been quite a number of injuries caused by wild animals in the stockyards. I would not say that it is a frequent injury. You can never tell when a wild one is going to take after you, or whether you are going fast enough to get out of its way. I think it would be within the right of a market agency to demand cash for livestock

it sells, but it would be very impracticable. We could refuse to purchase until our customer had furnished cash.

The item of expense in connection with telephone and telegraph contains an item of expense that we are put to in trying to determine in advance whether or not a man's check is going to be honored for livestock which we purchase. I was particularly interested in securing a bond protecting in matters such as concern the selling of livestock to people in the country and to packers who are not bonded to us. That constitutes a very material hazard in our business, when you consider that there are days when we will sell to an unbonded packer fifty to sixty thousand [fol. 304] dollars worth of livestock. We have received pay in the past, but that is no assurance that that is going to continue right along. Something might happen to one of these buyers. The livestock that we sold might be in the cooler, and all we would have would be the beef, if we could identify it, and that would be very hard to do. I believe that if we sold livestock to a packer, and the packer refused to pay, the owner would look to us for payment. Of course, that is a question of law. I do not know what the outcome of it would be.

[fol. 305] F. E. Mollin, a witness called by the Government, after being duly sworn, testified in substance as follows:

My business address is 515 Cooper Building, Denver, Colorado. I am secretary of the American National Livestock Association, which is an association of stockmen in the western States composed largely of cattlemen, but we do have three or four of the principal wool growing associations which are member agencies. Wyoming, New Mexico, and Arizona wool growers contribute to the American National. By stockmen I mean producers of livestock. Members of our association are composed of individuals as well as associations. The principal associations which are members of the American National are the Nebraska Stockgrowers Association, the Wyoming Stockgrowers Association, the Montana Stockgrowers Associations, the Utah Cattle and Horsegrowers Association, the Washington Cattle and Horsegrowers Association, and the

Oregon Cattle and Horsegrowers Association, the California Cattlemen's Association, the Nevada Stockgrowers Association, the Arizona Stockgrowers Association, the New Mexico Stockgrowers Association, the Texas and Southwestern Cattle Raisers Association, the Colorado Stockgrowers Association, and the three woolgrowers associations. We have no affiliations of nothing but hog raisers. There are some hogs raised in our territory by cattlemen. There are a good many cattle shipped by members of our association and its affiliated associations to the Kansas City market from Colorado, New Mexico, and Texas.

[fol. 306] I have been secretary of the American National Livestock Association since April 1, 1929. We are interested in all matters of national importance to the western stockmen, such as tariffs, railroad rates, legislation, advertising of meat products, and the matter of stockyard and commission rates. It is my duty as secretary to take an active part in these things. Prior to becoming secretary, I worked for a bank committee for nine months, liquidating a ranch property in Nebraska, and for 22 years I was with a firm of large ranchers and feeders in Nebraska. I do not recall that we ever marketed any cattle at Kansas City. Our livestock were marketed largely at Omaha and Chicago. I was frequently on the Omaha stockyards in connection with the sale of livestock of the Kent & Burke Company. I made it a practice to go to the yards every time we had a shipment on the market, and in addition made frequent trips down there to find out how stock was selling. We occasionally made purchases there. The American National Livestock Association has an annual convention, and each of the State associations has its annual convention. I always attend these meetings. That is my principal source of contact with livestock producers. We have frequent visitors at our offices in Denver, and we meet producers in large numbers at special meetings.

I have heard discussions in regard to the desirability of the Secretary of Agriculture making inquiry into the reasonableness of commission rates at the various stockyards. The most recent one was at the mid-summer meet-[fol. 307] ing of our executive committee, which was held in Denver on August 5 and 6, at which this particular matter was discussed, and I was ordered to appear at this

hearing. We have a large executive committee, something over a hundred members. In addition, the presidents and secretaries of our State member associations are considered ex-officio members of our executive committee.

I would have to refer to the records to determine which members of the executive committee were present at this meeting last summer. The instructions were to proceed to take part in this hearing along the same lines that Mr. Tomlinson participated in the Omaha commission case. Mr. Tomlinson was my predecessor. I have consulted with both members of our association and nonmembers, who have stated that they were very anxious to have the hearings under the Packers and Stockyards Act, to determine fair and reasonable charges, expedited. Following the war, there was a great protest from the entire producing region as to the commission rates, and at various places they were proceeding to take action to adjust rates by conference with the individual exchanges. Then there was a proposal to determine commission rates by arbitration, and that rather set things back. The livestock industry was tremendously disappointed in the award, and realized that they could have got lower rates by direct negotiations. They were good enough sports to accept it until the Omaha people tried to advance the rates, which reopened the whole subject. It is the general attitude of the stockmen with whom I came in contact that they desire inquiry made into the reason-
[fol. 308] ableness of the commission rates.

Cross-examination:

The Kansas Livestock Association is not affiliated with my organization. We have a few individual members in Kansas. I personally have had no experience on the Kansas City market. I have been at the Kansas City Stockyards a number of times and I never observed that there was any particular distinction between the operations here and at Omaha. I never was in two yards that were exactly the same. I never saw any difference at Kansas City that would possibly affect the cost of operations of the commission men. This hearing is being held at a time when wage scales are certainly lower than they were when the Omaha hearing was held. I think they could not have any higher prices than they had at Omaha, probably should be lower. I do not think that the Kansas City Livestock Exchange

considered itself bound forever by the Arbitration Award.

I made no investigation to determine whether the percentage relationship of total commissions earned at the Kansas City market and the gross sales and purchases have increased or declined since the arbitration award. I do not think the value of the livestock has anything to do with it and never have thought so. I never have understood that it has been a factor in determining the rates. Some people think that the rates should be on a percentage basis but I never have thought so and I do not understand that that has had anything to do with determining the existing schedules. I do not know anything about whether costs have actually declined or increased in the operation [fol. 309] of the business of the respondents in this particular hearing. I do know that the general wage scale is lower now than four or five years ago. It would naturally apply to common labor that is involved. I would not say whether there has been any reduction in their more skilled labor. I never made any particular study of what would be the reasonable cost of service in the marketing of other agricultural products comparable to the services rendered by livestock commission men. Each agency that handles such products would have to justify the charge they make according to the conditions in that particular commodity. You have to consider the cost of doing business. Naturally the percentage is lower in the cost of a carload of fat cattle than in the cost of agricultural commodities which are relatively low-priced.

Experience in business, knowledge of livestock and trading ability are essential to the fitness and competency of a livestock salesman. He must have skill, ability, experience and knowledge. I think this applies more to fat animals than to feeder animals. I think that would be quite possible that the rate charged for selling does not determine the ability of the salesman.

Our membership consists mostly of range cattle producers. There is a great range in variety in the value of stockers and feeders. I know that there has been an increase in this range since 1900. I think the range in values has been increasing rather than declining. In the case of feeder cattle the difference is so easily apparent that I have never thought that it required the expert knowledge of cattle to handle feeder cattle that it does to handle fat

[fol. 310] cattle. A feeder cattle salesman has to consider future possibilities of those cattle. Speaking of feeder cattle, they are sold to the speculators while there is a comparatively small number of fat cattle buyers. The commission men can sell them direct to the countryman or to another commission firm acting for a buyer in the country but you have got a lot of speculators on this market. I was on this market this summer and was out through the stocker and feeder division. I have always called the speculator a necessary evil. The more direct the movement the better we like it. It is possible that there are too many speculators just the same as there are too many commission firms. I took occasion to look up the number of commission firms on this market and I note that they have been increasing since 1922 while the receipts have been decreasing, according to the yard company's report. There are order buyers on this market. His presence is a very desirable factor from the point of competition. As the number of order buyers increases it is the natural assumption that you get a better price for the livestock. The increase of six or seven firms in the last 7 years might be in order buyers. I cannot say as to that.

The Inter-Mountain Livestock Marketing Association is a cooperative concern of the livestock producers and feeders in the Inter-Mountain territory. I called the first meeting but I have no official connection with it. It is financed by the National Feeder and Finance Company which is in turn financed by the Federal Farm Board. I had nothing [fol. 311] to do with making the form of contract. That was made by its own board of directors. The position of the American National with regard to marketing matters has always been to make available to their members every medium of marketing there is. I cannot say that I have ever read the final draft of the contract issued by that association. If there is an arrangement for a percentage charge in that contract it is my understanding that it applies on direct marketing and would have no reference to shipments to central markets.

The California Cattlemen's Association reduced their charge from 3% to 2½%. They got off to a bad start. They did not have any central market out there when they started this organization. They were selling direct at the time. They are thoroughly convinced that they have

come nearer getting the value of their livestock since they have had the organization. The first divergence from the central marketing idea was the direct marketing of hogs. The fact that it was increased very rapidly has proved that a great many producers feel that it is to be valuable. I have never felt that we were going to do away with these central markets. If the operations of direct buying decreases the volume there would be just that much less business for the commission man. If it makes the volume lack uniformity I imagine it would tend to increase costs.

The transportation costs on livestock is a factor that enters into marketing in a much greater degree than the commission charges.

I do not recall with any exactness the relative amounts [fol. 312] of these charges. During the last 10 years I would think that the transportation charges had increased more than the other charges. The differential that exists between the lives cost of the animal to the packer and the wholesale price of the product has not varied much since 1921, according to the information I have. It might have increased a little. The retail costs have continued to increase. I do not know about the percentage of increase in the commission charges or whether they have borne a closer relationship to the cost of living than in the case of this spread which represents packing costs and retail costs. The difficulty there is that we have no control or anything to say about what the commission charges were in those days. We haven't the figures to assume that they were on a proper basis in those days. They may have been too high relative to your charges then.

The livestock industry today is in the dumps and cattle are losing money. We should pay only a fair and reasonable charge for service. It is pretty hard to say just what the immediate effect on the industry would be but it is the total effect of all the charges that go into it. If you say one little charge is not of any effect and there is another, the grand total makes a considerable difference. We think that the nature of your business here has been such that it has attracted more men than are needed to conduct the service and that makes it tough for all of you. I think the only practical way to regulate the number involved in the business is through establishing reasonable

rates based on good service and efficiently operated firms. [fol. 313] I am not in accord with any idea that would fix costs solely on the basis of the product handled. I have never thought that the commission business at the central markets could be based on a percentage charge. The situation in California is quite different. They have a very expensive way of doing business due to the fact that it covers such a wide territory.

The Kansas Livestock Association was formerly affiliated with our organization.

I think the difference in views with regard to direct buying of hogs had something to do with their withdrawal from the American National. It would seem that a greater efficiency in selling would be required where there is a wider ranger of spread than there would be in a smaller spread. For a good many years packers have been sorting cattle. I did not know there had been any marked change in recent years. I think the increase in drafts has been due at least partly to the truck-ins and the smaller units. An increase in the number of drafts affects costs and that will certainly have to be considered. I know that there has been some change in the methods of packers. I have been in several conferences with them this summer with reference to grades but I did not know that they had put that into effect already to the extent that it affected the number of drafts. I presume a change of that sort is in the interest of increased efficiency in selling. If it affects the handling of cattle in the yards it should be given consideration.

[fol. 314] I think there is a marked relation between the average cost of farm labor and its comparison with the cost of commission rates. If the commission men have to deliver the livestock to their pens that should be taken into consideration. The duty of the salesman is to keep in touch with the market conditions, receipts at his market and at other markets and to try to interest the buyer in his particular kind of livestock and then to sell them to the best advantage. I would think he should keep in touch with the demands for livestock on the market. The more you scatter your selling to a great number of firms, the harder you make the task for each one of your salesmen. After he sells them he usually goes to the office and talks to the shippers. It is an advantage to him in grading his cattle

to keep in contact with his customers and their methods of feeding and finishing cattle. The more he knows about what he is selling the more efficienc-y he can sell them, but I do think that there is a limit to the amount of field service that a commission man should try to give. It is awfully expenseive.

We handle grain in Nebraska and I am familiar to some extent with the grain trade. In connection with selling grain they have scientific and mechanical device- that test for protein and in effect to establish grades. There is no such device to register grade and value of animals. The selling of grain is indoors by sample on a product previously graded. In the case of a livestock salesman it is up to his judgment.

[fol. 315] In the old days you had a two season market. You had a market for six months of the year when there was not so very much coming to market except the grass cattle from the western ranges. We did not have an all year round feeding program in those days. That has been accountable for some of the narrowness in the spread at that time as compared with the present time. We have an all year round feeding program now. In the old days you had at one season of the year mostly grass cattle and at one season mostly fat cattle.

There is one thing that has a lot to do with the shipment of livestock to cooperative concerns and the competing agencies. That is the old friendships. Members of our association in Colorado have shipped cattle to this market for many years who are interested in cooperative marketing but their loyalty to the men they have known for years has kept them shipping to the old line concerns. Friendship might have built up on efficiency but it might continue in spite of inefficiency. I have in mind a firm that our company did business with when we were in Nebraska and we continued doing business with them long after efficiency on their part would have dictated that we do so. We finally did take our business away from that firm. We stayed with him a long time just for loyalty. That illustrates what I have in mind. I think that a sensible man realizes that unless he is efficient the business would leave him. They have to try to maintain their standing. I do not know of any cases of errors in remittances on this market or anything about the individual profits of the commission men

[fol. 316] and how such profits compare with profits at other markets. I am interested in a fair inquiry into the matter and that a fair result will be arrived at. I am also interested that that result will retain efficiency upon the market.

Redirect examination:

There is a great deal of money that is now spent in the solicitation of business that is not for the purpose of attracting new business to the market, but simply one firm trying to get it away from another firm. That does not do the livestock industry any good. If there is no limit on the amount that can be spent in that way, except the money that they can make through commission, there is the constant urge to have higher commission charges. As I have observed it, the only result of higher commission charges has been more firms in business. Conversely, it seems to me that if you have a less return from commission there has got to be some restriction of the amount that they can spend in advertising and business solicitation. The natural result of that, unfortunate as it seems, locally, will be that some firms would have to retire from business.

In connection with the matter of commission firms' salesmen going to the country, I think in recent years there has been more of that. Along the end of the week salesmen go out to the country to inspect cattle that are on feed, tell about what they will bring, and when to market them. I think it is an expensive service, and to a certain extent a dangerous service, because if a salesman goes out there, [fol. 317] and tells the feeder that *that* his cattle will bring more than they actually will bring, he has got a disappointed customer. I am not convinced of how practical that service is. I believe the practice can be abused. It is very expensive and hardly justified by the benefits to the industry. If the man whose cattle were looked after by the salesman had to pay the expense of the trip, that would have a limiting effect on the demand for this service by the producers.

Recross-examination:

Certainly a salesman should be allowed to go to the country and spend a reasonable amount of time, but in a general survey trip rather than as an individual inspection. It

seems to me as pretty well known on the markets like Kansas City as to what conditions are in the various territories tributary as to the market. You get lots of your information by contact with shippers as they come to market. I would not say that I am in favor of restricting entirely a man going to the country. I think there is a limit to it. The only thing you could do would be to tell the country men whether or not conditions justifies your going. You would have to take into consideration your incomes in arriving at that judgment. It is not practical for salesmen to inquire into the feeding conditions of everything that he sells. In the spring of the year when eastern Nebraska is loaded with long fed cattle, the solicitors from Chicago just absolutely swarm out into that country. That is not rendering any service to the industry, and the industry is paying for it. These solicitors come out there and tell [fol. 318] their tales as to what they can do with those cattle. We would not pay any attention to that kind of stuff. I think the exchanges have met that situation to some extent. I do know this, that in the operation of exchanges in many cases the substantial men on the exchange who have definite ideas or responsibility and judgment in those things, are sometimes outvoted by the less substantial men. I would not say that necessarily applies to Kansas City. I think there is certainly a definite advantage to the salesman to make trips to the country and get posted as to the conditions, and see as many cattle as he can. It is not a practical thing to do it to an extreme.

[fol. 319] E. B. SPILLER, a witness called by the Government, after being sworn, testified as follows:

My business ad-ress is Fort Worth, Texas, and I am secretary and general manager of the Texas and Southwestern Cattle Raisers Association, which is a voluntary organization of cattle producers in the States of Texas, Oklahoma, and New Mexico. The membership is composed of individuals, firms, and corporations, which are engaged in the actual production, shipment, and sale of cattle. It is affiliated with the American National Livestock Association. My association holds regular annual conventions, and we otherwise come in frequent contact with the member-

ship of that association. Many of our members are large shippers to Kansas City. It is their feeling that as they are paying commission charges at the stockyards an investigation to determine the reasonableness of those charges should be carried on by the Department of Agriculture.

Cross-examination:

I do not know whether those charges are high or low. I was not at the meeting when the agreement as to the arbitration was reached. I attended a preliminary meeting. I cannot recall definitely whether our association was a party to that agreement, other than through the American National Livestock Association. I would not want to back out of any agreement that we made. I do not know that we ever agreed to go into that for any stipulated length of time. Changed conditions might develop which would warrant a change in the charges, which might be an in- [fol. 320] crease or *or* a decrease. Changed conditions might warrant a change in the rates which were established at that time. If this investigation develops that changes should be made we think they should be made. It is possible that they might find that they should be made whether or not by changed conditions or that the agreement of the rates fixed at that time are not entirely all right.

I am not advised as to the cost of operations on this market. I am familiar in a general way with the operation of the yards; not so much at Kansas City. I have had experience in the commission business at Fort Worth. I am not familiar enough with the marketing of other products to know how the skill and ability of a salesman in those lines compare with the skill and ability of a livestock salesman. The competency and efficiency of salesmen are substantial factors in the price which one gets for his livestock. In order to be an efficient salesman you must have honesty, integrity, experience, knowledge, natural trading ability, and judgment as to human nature. The salesman is the one who determines what price he should ask for the livestock. It would seem that his responsibility is greater than the salesman of merchandise with a price list in his pocket.

The majority of our membership is composed of producers and growers. We do not have many who feed livestock.

Our organization has not filed a complaint on the present schedule of rates here in Kansas City. Pasture rentals in Texas have increased over the period of the last 15 or 20 years. I would say that short time rentals have probably increased 50 per cent since 1913 in the Panhandle country. [fol. 321] In the case of large bodies of land they are under long time leases, and I do not think the increase has been that great. Our association does not operate an organization that sells livestock on commission at public markets. The association did some organization work in connection with the Texas Livestock Marketing Association. The plan was to enter into contracts for producers to market all their production for a given period of time through that association. I do not know whether they went through with it or not. That association is hooked up with the National Livestock Marketing Association of the Farm Board set up. I do not know what the connection is between it and the agency at Kansas City, which is also a member of the National Livestock Marketing Association. The competitive, centralized, livestock markets have an important place in livestock marketing. I think that the rates should be such that the company can operate in such a way that they can give efficient service and attract men of ability. Men have to have experience in order to do the work efficiently.

[fol. 322] ALBERT K. MITCHELL, a witness called by the Government, after being sworn, testified as follows:

My business address is Albert, New Mexico. I have been engaged in the cattle business all my life. I handle Hereford cattle, both registered and commercial cattle. We have about 1500 head of registered cattle on the ranch, and about 2500 head of commercial cattle. We market anywhere from 35 to 70 cars a year. Part of them are marketed at public stockyards, principally Kansas City. I am a member of the American National Livestock Association, the New Mexico Cattle Growers Association, and the American Hereford Breeders Association. I am a director in all three, and vice president of the New Mexico Association. I have frequent contacts with producers of cattle in my section of the country who ship to the Kansas City market. I believe that they are interested in having this investigation carried out. It

was taken up at the quarterly meeting of the New Mexico Cattle Growers Association, and it was urged that the association have a representative at the hearing.

I represent that association. I have been on the Kansas City stockyards frequently in connection with the sale of cattle. I have sold cattle at Denver and Oklahoma City. I do not know anything that renders it more difficult to sell cattle on the Kansas City Stockyards than on any other stockyards. I have not observed that it took a better or more intelligent or more highly trained type of salesman to sell cattle on the Kansas City Stockyards than on any other stockyards which I am familiar.

[fol. 323] Cross-examination:

The meeting of our association which I referred to was held probably in August 1930. We have not filed any complaint with the Secretary of Agriculture on behalf of that association. At the time of the meeting we were advised that the Secretary had pending an inquiry upon the reasonableness of these charges. Most of the cattle from our section come up here. They are mostly stockers and feeders. This past year we marketed only a few cars of cattle at the Kansas City market. By direct buying I mean that the feeder from the corn belt goes down and buys calves in person. Those transactions are frequently made and are becoming more frequent. I cannot say whether there should be a great deal of difference between Kansas City and Denver, and possibly Omaha in so far as difficulty of buying cattle and judging correctly and accurately the quality and dressing percentage. The methods by which a steer is finished and fattened cut considerable figure in the quality of the animal from a beef standpoint.

The prices established from day to day at the Kansas City market having a bearing on the prices which are established on sales direct from the producers or range men to the feeder or finisher in the corn belt. They have probably had more influence in the past than they do at the present time. I would say that it is because there has been a demand created for those high quality cattle down there that will take care of them regardless of what the Kansas City [fol. 324] market does. There has been considerable activity and effort by individuals in building up direct contact with feeders.

We ship our cattle through the market like Kansas City or sell them direct when we want to. Today our cattle are coming to the Producers. That is our initial shipment to that firm. Before that John Clay has sold our cattle. I understand that if the Producers Commission Association had any surplus at the end of the year I would get the benefit of that proportionately. From that standpoint I would not be interested particularly whether other firms charge more or less. We have an organization subsidiary to our association called the Inter-Mountain Livestock Marketing Association. We have signed the standard contract with them limiting the number of head that they are to handle. It requires that the cattle be shipped to commission firms which are controlled by them or affiliated with them. That particular organization is a subsidiary of the National Livestock Marketing Association. My understanding is that these commission firms are not deriving any benefit from them. The money has to be loaned through a separate financing organization to producers. If you borrow from it you must be a member of one of these association-, such as the Inter-Mountain Marketing Association. In so far as they make loans I suppose it would stimulate the amount of cattle consigned to these particular agencies. If the rates were lower the producer would like to get the [fol. 325] use of that money at the low rate of interest.

The stocker and feeder cattle that come to the Kansas City market originate from all over the Southwest, and I suppose the Northwest. There is a great variety of grades and quality varying in value for feeding purposes. Each owner's livestock ought to be sold on its own merits. The salesman should be able to distinguish those cattle one from another with respect to any differential in grade or quality that might exist. The price asked or the price expected should be dependent to a large extent on the judgment of the particular salesman that handles the livestock. I think a salesman should have experience, knowledge, natural aptitude, trading ability, acquaintance with the character of the demands for the class of livestock that he is handling. I would not attempt to sell livestock as a salesman on the Kansas City market as compared with certain of the men who are on the yards. I think I can do a better job than a lot of them down there do. There are some firms that have very efficient men selling cattle. There are some worn out cow punchers from our country selling cattle in the Kan-

sas City yards that could not draw wages from anybody down in the country.

I believe that by eliminating some of these more inefficient firms you could increase the volume of business to those who are operating efficiently to enable those rates probably to be cut in two. It is my understanding that a commission firm to engage in business is simply required to [fol. 326] register with the Secretary of Agriculture. I believe it would be better if the Secretary were to register only men where public necessity and convenience demand it. I understand that is not the situation. I do not know of any efforts of the Exchange to limit the number of the personnel of its membership. I do know there has been a slight increase in the number of firms. I cannot see any objection in increasing the number of order buyers. I do not know anything about the actual cost incident to transacting business on this particular market. I have observed the widening differential in the amount paid for lower grades as compared with the better quality cattle. I believe that the premium in price on account of quality is a good thing. The spread in the price differential between the various grades to a certain extent would require greater competency on the part of salesmen and also place a greater responsibility upon them. I have noticed during the last 10 years a spread between the live cost and the retail price. I know that the increase in retail cost has absorbed the major part of the spread. I would not want to state whether the packing costs have increased more or less than the retail costs.

It is not the desire of the stockman to reduce the efficiency of the service. I want to see the most efficient service maintained. I realize that the price on any market has an effect on the price generally.

I know from our own experience that our prices are con- [fol. 327] trolled a great deal more by the buyers who go into the country direct and buy there than by the prices that are reflected from the Kansas City market.

I have approved the present method of remittance of proceeds. I believe it is better than sending out individual checks drawn on the bank here at Kansas City. I think a commission firm ought to have sufficient working capital to transact its business safely.

Redirect examination:

Personally, and I believe I would be speaking for the majority of the producers, one day would make no difference to them in the receiving of their remittance, and especially if it necessitates an increase in the commission charge.

[fol. 328] FRANK H. BETTON, a witness called by the Government, after being duly sworn testified as follows:

My business address is Livestock Exchange, Kansas City, Mo. I am general superintendent of the Kansas City Stockyards Company and have occupied that position 12 years.

It certainly is and always has been an open market. We encourage buyers on this market to the best of our ability. We feel that the more outlets there are for stock that is present and for sale, the more competition there will be and the greater benefits will inure to the producers of the stock. I believe that the more nearly the market and the prices established accurately reflect the true conditions of supply and demand, the more patronage the market is likely to receive.

Pen Assignments

Commission firms cannot all be in what they consider the most favorable location. The volume handled determines the number of pens which a firm occupies. The older firms retain their locations and the newer firms are, as a rule, assigned to the farthest locations from the center of the yards and they gradually work up as the years go by. There might be some advantage in location.

The receipts of cattle at this market are unusually heavy during the fall period for about four months. It extends from towards the middle of July up to and into November. At other times it begins a little later and extends up into [fol. 329] December. From the standpoint of the stockyard company it is necessary and essential to maintain, both in personnel and material equipment, a sufficient capacity for handling the peak movement. It naturally follows that market agencies handling that class of cattle would have to do the same. You can only partially recruit additional forces necessary to handle peak loads. You must keep a

nucleaus of experienced forces. In experienced men cannot drive livestock through the yards. It requires a knowledge of the handling of stock and the general work of the stockyards for men to be proficient in the performing of that service. When we bring in additional men to handle the peak movements, we employ men who have had previous experience so far as possible. Every new employee is given careful instructions before he is put into the yards. He is instructed in the methods of handling stock and securing gates when he is between the stock. Those men are placed in work which does not require the efficiency that later on would be required of him. It is of great assistance if a driver can identify cattle after he has once seen them. It is very exacting work. It requires accurate and experienced men, following long established systems and methods of handling the business. If you just picked up the ordinary run of men that you see down here on the street and put them in the yards to move the livestock it would unquestionably result in a great many difficulties. There are greater dangers in the stockyards to those who are inexperienced, and even experienced men sometimes receive injuries in the course of the ordinary [fol. 330] performance of their duties. The range cattle are not accustomed to confinement and the conditions which surround them in the yard. They become nervous and are wilder than native cattle. A large proportion of the receipts are range receipts during the peak movement.

We employ methods by which we keep in touch with those agencies, and we think it necessary or we would not employ them of course. Stocker and feeder cattle go out of this market into a very wide area to the eastern, central, western, and northern portion of the United States. We have shipments as far east as Ohio, Kentucky and Virginia. We have shipments of fat cattle going to New York, Detroit and Pittsburgh.

We have men who make periodical trips to that territory for the purpose of making contact with eastern slaughterers who have a demand for the class of cattle or hogs that come on this market. We are all engaged in the work of up building and maintaining the livestock market and necessarily all entities should work for that end. There has been quite a diminution in the volume of receipts in the last few years.

Competition among buyers and sellers plays a great part in the maintenance of the market. This business has been built up over a period of a great number of years during which competition has been very strong from other markets, and in spite of that competition it has gone ahead and increased its business until the last few years.

[fol. 331] If all livestock were consigned to the stockyard company and it, as one seller handled the sale of that livestock, competition would be stifled. Livestock salesmen know that the life of their business depends on their efforts and their efficiency in the disposing of livestock. In my opinion, if all this business should be directed through a single agency, salesmanship competition would not be so keen and the producer would suffer from the effects of the lack of competition.

If there was a single sales agency, in my opinion there would be few buyers. In my opinion the advantage would be to the buyer. I think an efficient salesman is a very valuable asset, not only by reason of his performance but by reason of his acquaintance and his personality.

An efficient salesman should have an accurate knowledge of all classes of livestock coming to the market. There are differences in value; experience on the market, natural aptitude for the business, trading ability, initiative and sound judgment. They gain these qualifications by their performance on the market. They work up in the business.

The train runners on the Kansas City market are generally efficient. The same applies to the yardmen. An efficient yardman is an asset to a commission firm. The duties of a train runner or a yardman are such that they must be acquired by experience. The bunching of cattle into "jack pots" tends to expedite the movement of cattle [fol. 332] through the yards. It is essential for a jack pot man to put as many drafts across the scales as he can within the time allotted for weighing during the turn which that firm has at the scales. It is very essential that he be accurate in the identity of the specific cattle that he puts into each draft. He must be accurate in the designation of the purchaser and the name of the owner of the cattle. There are frequently a great many drafts taken to the scales at one time. The jack pot weigher must maintain in his mind the identity of these different lots of cattle with respect to their ownership and with respect to the buyers

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or the parties to whom he is instructed to weigh them. I would not say that the average man could do it. It results from a natural aptitude to begin with and experience in the use of on the yards. An efficient jack pot man is not only an asset to his employer, but indirectly he is an asset to our company because the more rapidly he can place those cattle correctly on the scales, the more rapidly we are able to dispose of them.

In case the commission man's employee weighs stock to the wrong buyer and they would discover it, it is necessary to recover the stock from the buyer and have it identified and reweighed, or by consent of both the actual buyer and the one to whom he has weighed it, to make the change of delivery on the stock. In case no identification could be made the matter must be adjusted. Perhaps the commission firms would have to suffer, unless they were able to sell the stock or to dispose of it in such a way as not to [fol. 333] injure the owner financially. If cattle were not moved in jack pots from the drive-in chutes to the selling pens and from the selling pens to the jack pot scales, the business could not be conducted as expeditiously and more men would be required to handle the livestock. By a draft I mean the process of placing one lot, consisting of one or more animals, on the scales and having it weighed and taken off at the opposite end of the scale.

There has been a decrease in the number of head per draft that has taken place over a period of a good many years. It increases the expense. Some years ago there were a great many of what we term "country shippers." They bought stock in the country, assembled it, and shipped it in one lot. Those country shippers have disappeared to a large extent and in their stead the shipments are sent in by communities, and there have been shipping associations established through which the marketing of the stock is done for the original owners. That has had a natural tendency to decrease the number of head per draft. There has also been a tendency on the part of buyers to segregate the different qualities of stock more closely before buying them than after buying them as previously was the system. The packers buy their hogs in smaller lots and classify them before buying them. That puts the burden of sorting upon the yard operation rather than upon the plant operation at the packing house. That has tended to increase

costs of yard operation, both in the performance of a stock-
[fol. 334] yard service and commission services. That applies to both cattle and hogs.

Packer buyers are trained men, representing their principles with respect to the purchase of livestock. My observation has been that the buyers are recruited from the younger employees, who gradually grow into the higher service.

There are many different grades of cattle, particularly that come to this market. The climate is variable and the nature of the crops and feeds produced are variable. Those differences have an effect upon the value of the livestock that comes to market. It is in the interest of the patrons of the market that salesmen be competent men, and as far as I am able to judge they are a very competent set of salesmen employed at the Kansas City yards. I would not consider myself competent to sell livestock on the market. Every move that is made, and every record that is made with reference to handling livestock must be accurate.

Purchases and sales of livestock are accomplished by word of mouth. I believe that the rules of the Exchange and the market practice agreement are essential to the expeditious movement of business on the yards. The systems and methods have been developed to meet conditions as a result of past experience in the operation of the yards.

Country buying has increased materially over a period of the last ten or twelve years. As it increases or dimin-
[fol. 335] ishes it tends to decrease or increase the volume of livestock receipts coming through the market. Local packers have been particularly active in the purchase in the country of hogs in the particular territory served by this market. Direct buying of hogs in the country by packers has a tendency to put peak loads on the market.

Federal regulations as to sanitary requirements affecting the interstate movement of livestock have been increasing in their complexity and general scope from year to year. There are regulations with respect to breeding cattle that have to do with their origin and affect their movement into the other areas. There are changes and additions in regulations quite frequently in some states.

Redirect examination:

It is very infrequent that a shipper sells his own livestock on the Kansas City market. In such a case he is required to pay the charges before the stock is delivered to him. After the stock is delivered to him he is at liberty to sell and collect for it. I do not recall any such shipment recently.

We maintain a market reporting department and he reports all sales that are sent to his department and market conditions are wired to our traveling representatives from that department. Information of a character that is interesting to producers is sent through that department very extensively out through the country. We have a number of road men or solicitors who travel over a wide area of the country and keep the shippers in their territory advised [fol. 336] and instructed as to the advisability of marketing their cattle and solicit their patronage at our yards. We have some men who travel through the East and visit the various order buying prospects, giving them information with reference to conditions at this market. Through that contact we keep them better informed as to the facilities at Kansas City that would be beneficial to their business as compared with facilities at other markets. They keep them informed as to the spread in price and the freight rates. They put them in touch with the order buying agencies through whom the transactions are carried on. The stockyard employee never shows any partiality in his soliciting either for shipments to the market or where he is soliciting for order buying. These solicitors post the prospective patrons with reference to railroad services and with reference to the markets. They feature the advantage that we have over some other markets. Our men are uniformly very good judges of stock and try to advise them to their advantage. These men are good judges of livestock. They keep posted through our market correspondent who writes and wires them frequently. They keep themselves well informed. This activity is carried on constantly and continuously throughout the year. These men are divided up so that they concentrate on different sections of the country. The stockyard company sends out representatives to livestock meetings and conventions.

Unquestionably salesmen are not all of equal ability. As to their degree of efficiency there are certain different degrees. Unquestionably there is a variation in ability. [fol. 337] The same would be true with respect to those engaged in yarding.

Some years ago hogs were weighed, mostly all of them, in carlots and sent to large holding pens for the packers. The practice now is to weigh them in different lots and different titles.

I do not have in mind any specific instances when peak loads were thrown on the market by reason of direct buying by the packers. I am speaking just from general information. That is just my opinion of it.

Traders and speculators perform a useful function. They enable the buyer to select the classes of cattle he desires which would not be practical if he were buying from a commission firm. The traders sort them largely in carload lots but if a prospective buyer wishes to change some of the cattle from the lots in which the trader sorted them they give him that privilege. If the buyer overbids the packers and other buyers they get the cattle out of first hands. We ship a great deal of cattle bought out of first hands.

[fol. 338] B. C. BIGGERSTAFF, a witness called by the Government, after being duly sworn, testified as follows:

My business address is Room 906, Kansas City Livestock Exchange Building. I am secretary of the Kansas City Livestock Exchange. I will state in a general way what the Exchange is by reading from page 3 of the book of rules as follows: "The objects of this Association are: To maintain a commercial Exchange, not for pecuniary gain or profit, but to promote uniformity in the customs and usages of members; to inculcate and enforce correct and high moral principles in the transaction of business; to inspire confidence in the methods and integrity of its members; to facilitate and provide for the speedy adjustment of business disputes; to acquire and disseminate valuable commercial and economic information; and, generally, to promote the welfare of the livestock market at the Kansas City Stock Yards." The membership is composed of individuals who are in the livestock commission business

on the Kansas City Stockyards with the exception of those that have retired or are inactive. We have some order buyers that are members of the Exchange. The traders at the Kansas City Stockyards have an exchange of their own. There are some order buyers that do not belong to the exchange. There are two market agencies, the Producers and the Farmers Union which are not members of this Exchange. They are the two cooperatives. There are some independent order buyers but no other independent commission firms. The Exchange in a few days will be [fol. 339] 45 years old. It is my duty to attend meetings and keep the minutes. I have custody of the books, records, and rules and by laws.

Government Exhibit Nos. 9, 9-A and 9-B

Government Exhibits 9, 9-A and 9-B, the same being a printed booklet of the rules and by laws of the Kansas City Livestock Exchange and two yellow slips bearing amendments to those rules, were offered and received in evidence.

Services of the Exchange for which the shipper is charged Hog Dockage: Hog inspection is 20¢ per car and 1¢ per head on drive ins up to and including 20 head when the carload rate applies. There is a charge of $1.50 per arbitration paid by the person calling for arbitration. The hog dockage and inspection is operated in behalf of the shipper for his protection. Inspection comes on all hogs that come to the yards. As I understand it they are inspected generally for health.

Agricultural Development Fund

This is the fund from which the exchange derives its revenues to maintain its office and keep it a going concern. We charge our member firms 10 cents per head per car on all inbound stuff, and 6 cents per car on cattle, hogs, and sheep bought on order and 6 cents per car from brokers on all stuff cleared for traders. The less than carlot rate of collection on brokers, and on our own people, is on the [fol. 340] basis of 6 cents a car, using 36 cattle and calves, or 60 hogs, or 100 sheep, as a carload. The agricultural development work inclules our contributions to and efforts on behalf of 4-H and vocational boys' and girls' work, hog promotion and beef cattle production carried on by the

Chamber of Commerce and the State Agricultural Colleges of Kansas and Missouri, and contributions to prizes for fairs and shows, and occasionally medals for students at the State Agricultural Colleges in short course work. Then we have quite a bit of outlay at times for the work we do in connnection with the State Livestock Sanitary Commission of Kansas. We have never levied any special assessments that I know of for any of these purposes whatever. (Witness was asked to produce figures showing income and expenses for this fund in 1929.)

Radio Broadcasting

We charge five cents per car on inbound stuff for the radio fund. Drive-ins are reduced to a per car basis for this purpose. This does not fall on brokers. We make no charge on purchases of outbound stuff for the radio fund. This assessment is provided for by the amendment to the rules introduced in evidence as Government Exhibit No. 9-a. This assessment was begun on March 1, 1930. The audits of the respondents for 1929 show an expense for free subscriptions to the market paper. That has been discontinued by a rule of the exchange. The market paper expense was not incurred under the supervision of the exchange. That was just an individual firm matter. As I recall it the radio broadcasting assessment was the only [fol. 341] assessment made by the exchange in 1930 which was not made in 1929. I do the broadcasting myself except when I am away on duty. The purpose is to inform patrons of this market as to the state of the market, and all the information that I am able to find that they want.

Transportation Department

We charge two cents per car on inbound stuff on a strictly car lot basis for that fund. We use that fund in the defense of the rights of the shippers to this market, to a just, fair and equitable freight rate and train service. It is also applied in the maintenance or defense of the rates that apply to this market on inbound and outbound and everything pertaining to railway transportation centered strictly in that.

Retirement of Memberships

We charge $3.00 per month per membership for a fund to retire the certificates of membership of deceased members.

They are the personal property of the deceased, and their estates are entitled to cash them in on that retirement. The rules of the exchange at page 14 fix the amount at which these memberships are to be retired. That rule has been in effect since August 1, 1926, and I think 16 or 18 memberships have been retired. They have never been re-issued. We have not made special assessments for anything since I have been secretary.

Assessment for the National Livestock Exchange

An assessment is made on inactive members for contribution to the National Livestock Exchange. The contribution on behalf of active members is made through the gen- [fol. 342] eral fund of the exchange.

Clearing House

Under the clearing house rules the service of the clearing house are extended to all market agencies doing business on the Kansas City Stockyards, regardless of whether they are members of the exchange. Those who use it are charged on the basis of the volume of business which they do through the clearing house. It runs all the way from $2 to $4 or $5 a month.

Other Activities of the Exchange

The exchange is registered as a market agency. I do not know for what functions it is registered to perform. Our exchange does not operate a collection business in respect to claims of its members or their patrons. We handle the fund that is collected for the National Livestock and Meat Board. This is deducted by the market agencies from the proceeds of sale and turned over to the Meat Board if the shipper does not protest. That charge is five cents a car.

We handle the payment of the premiums on the blanket fire insurance policy. The exchange attends to the procurement of the insurance and handles the money. The collections sometimes exceed the amount of the premiums. The surplus is left in the general fund. (The witness was requested to furnish a statement of the surplus for each year during the last five years.)

The exchange does not handle group life insurance for [fol. 343] the benefit of its members. We have our inde-

pendent association for that. It is called the Kansas City Livestock Exchange Employees Association. The members of the association are the members of the exchange, and its officers are the officers of the exchange.

Report of Financial Operations of the Exchange

I just took off the net, since our fiscal year does not run with our calendar year. For the year 1929, the inspection and arbitration on hog dockage had a deficit of $158.42 after its portion of operating expenses of the exchange allocated and charged to it were paid. At the close of the fiscal year of 1930, we had $85,905.22 in the general fund. That is our accumulated balance over 45 years. At the close of the fiscal year 1929 we had $75,150.92 in the fund. We gained about $10,000—$3,000.00 of which came out of sums that had been owing to us for some time. After deducting operating expenses of the clearing house we had $181.60. For the calendar year 1929 our surplus from the collections for fire insurance premiums was $2,071.52. We pay the Hartford Fire Insurance Company 15 cents a car premium on all meat animals arriving on the stockyards. There is deducted from the shipper's account sales 7 cents a car; on drive-in cattle, hogs, and sheep, 1 cent a head up to 7 head, and from there on just the 7 cents or the carlot rate. The difference between the 7 cents a car and the 15 cents a car is made up out of voluntary contributions by the packing plants and the yard traders. I do not have the amount of the contri- [fol. 344] butions made by packers and others to the insurance fund.

Following the fire in 1917, all parties went in under the blanket policy. Each of these people coming in under the policy contributed his share on an agreed basis. I do not know how they arrived at the seven cents per car. Packers contribute just so much flat each month. The 15 cents a car paid to the insurance company is based on incoming cars, and drive-ins reduced to a carlot basis. The coverage is for as long as the livestock are in the stockyards. The minute it leaves the confines of the stockyards it is not covered.

Cross-examination:

I became secretary of the exchange in October, 1925. Prior to that time I was a newspaper man. I covered the markets on several papers that I worked on at different

times. I was editorial writer, and worked on market reporting for the Daily Drovers Telegram of Kansas City for seven years.

Respondent's Exhibit No. 8

Respondent's Exhibit No. 8 is a chart showing the progress of the Kansas City Livestock market, and outlining some of the rules of the Kansas City Livestock Exchange designed to protect shippers to the market.

This vast area here, where Kansas City is the front door of the range country, and the back door to the Corn Belt, is based on the bulk producing areas of the West and Southwest and Corn Belt buying power for stocker and feeder [fol. 345] cattle and eastern order buying power. There was a period of expansion in transportation facilities prior to the establishment of the market here in 1871. The first packing plants were started in 1868, and between the times the market was established in 1871 up until the exchange was founded in February, 1886, the market operated in a sort of unregulated and chaotic way. An Exchange Building was erected in 1871, and during the period from 1871 to 1886, certain customs and habits of trading were being formulated and established, although they were in unwritten form. As the exchange grew and developed, these rules were developed, and the development of the market has grown to such an extent that it has broad duties and privileges that we are glad to live up to in connection with the livestock industry.

Respondent's Exhibit No. 8 was received in evidence.

[fol. 346] The rules of trading have been a sort of an evolutionary process as the market has grown. In the old days all the seriously crippled animals were shot by a humane officer and were sent to the tanks. In 1924 the Kansas City Cripple Association was founded. They made an agreement to take the crippled animals from the yards and from the docks, salvage them, sell the edible portions and make return to the owner. The record indicates that there has been a very material saving. In 1929 they took out 1652 cattle, 310 calves and 770 sheep. In 1929 they paid the shippers $50,404.29. In 1929 the average charge per head for handling cattle was $2.96, calves 87¢ and sheep 54¢ (similar figures for 3 years prior to 1929 were also

given by the witness). The market agencies do not get any return for that service except to encourage their patronage to the market.

No individual member of the Exchange can use the radio for any purpose whatsoever. It keeps down the expenses of the individual firms and takes away the exploitation by a firm of its own affairs. We do not use any market agency's name in our broadcasting. The Producers Commission Association broadcasts independently on its own account. There is no prohibition against a non-member. There is nothing in the trade practice agreement to prevent a non-member agency from sending out the market paper. It is my understanding that there is no prohibition against sending out the market paper at other markets.

Rule 5-A of Article 7 of the rules of the Exchange grew [fol. 347] up out of the commission firms employing men rather seasonally. It simply prohibits hiring a man and paying a contingent salary on the basis of the business he is able to bring in. He has got to pay him a salary. It is designed to protect the business of the individual firms from expenditures which simply involve the accumulation of a volume of business. Men from Oklahoma would come up here who had 7,000 or 8,000 cattle and they would hire themselves out to the commission firms for three or four months for a salary that was out of line with their worth. They could not sell anything. It just became so obnoxious that the Exchange stopped it.

Rule 7 in regard to furnishing meals or lodging is for the purpose of keeping from running up their expenses in buying business. The nature of these rules is to put a commission firm on its merits as a handler of livestock.

We try to hold novelties down to a maximum of 25 cents. That is the interpretation the Board put on section 7 of rule 7.

Section 1 of Rule 8 in regard to the discipline of members is more frequently invoked than any other rule of the Exchange. Recently an order buyer marked up his tickets on his principal in the East and he was expelled.

If I were a livestock shipper, knowing what I do, I would not ship to a market that was not policed by a livestock [fol. 348] exchange and rules. I have never seen the Board of Directors hesitate to inaugurate progressive policies. There are men that are inherently honest in the livestock

commission business and there are men who are inherently dishonest.

Number of Commission Firms

Prior to 1925 when I took over the records of the Exchange the records were somewhat nebulous. I determined the facts with respect to the number of commission firms from the records and these are the minimums. In 1915 there were 67 commission firms, 3 order buyers and 5 brokers; in 1916 there were 64 firms that I could locate positively, 3 order buyers and 6 brokers; in 1917 I found 65 firms, 3 order buyers and 5 brokers. In 1918, 63 commission firms, 6 order buyers and 7 brokers; in 1919, 68 commission firms, 5 order buyers and 7 brokers; in 1920, 66 commission firms, 4 order buyers and 8 brokers; same number for 1921 and 1922; in 1923, 62 firms, 6 order buyers and 9 brokers; in 1924, 65 commission firms, 4 order buyers and 7 brokers; in 1925, 66 commission firms, 5 order buyers and 7 brokers; in 1926, 64 commission firms, 5 order buyers and 7 brokers; in 1927, 62 commission firms, 6 order buyers and 6 brokers; in 1928, 64 commission firms, 6 order buyers and 7 brokers; in 1929, 65 commission firms, 7 order buyers and 7 brokers up until February or March 1930, 60 commission firms, 6 orders buyers and 5 brokers. Since February or March, 2 commission firms have dropped out, one broker discontinued business and one order buyer was [fol. 349] expelled. These figures do not include the two cooperative firms. From 1925 all the figures given represented maximums. These figures that I gave are from the records of the Exchange whose members carried firm permits issued under the rules and regulations. If they were in business part of the year I counted them here. At present we have 262 members in the Exchange, two of which are women and there are at present 35 non-active members of the Exchange. Non-active members are those who have retired and would have sold their membership probably if it had not been for the fact that we carry the group insurance. That leaves 228 active memberships. We got our group insurance policy on August 1, 1926, and from that time on those old fellows began to hold on to their memberships. Since 1920 we have retired 44 memberships for which we paid $180,000. In 1920 we had 303 memberships. Not a single membership has been issued from the

treasury. Practically all of the memberships were active in 1920 because there was no life insurance involved then. The total time of membership for all of the 262 members average- 17.6 years per person. Of course some of them were on the market quite a while before they became members of the Exchange. Of this membership we have 8 who have been members for 44 years, one for 39 years and 6 for 38 years.

Surety Bonds

Beginning in 1919 we compelled our members to take out surety bonds. I am trustee on these bonds and it is a matter of tremendous interest to me personally in relation [fol. 350] to the welfare of the shippers of this market.

The failure in 1919 resulted from adopting a system of remitting by personal checks instead of the individual market agency. That is, doing business on a float, kiting checks. I consider that our bond system is better even than a national bank. In this period of more than 10 years since these bonds were put in force billions of dollars of proceeds have gone back to the owners of livestock without the loss of a single penny and without delay in spite of the fact that there has been a period of somewhat extensive depression at times with consequent bank failures. There was one delay when we were not appraised of the defalcation for two days. We settled it in two hours after we found out what was the matter.

Redirect examination:

In some businesses transactions are nailed down with written contracts. I presume that there is an immense volume of trading done on the floor of the Chicago Board of Trade without written contracts. The same rule applies on the New York Stock Exchange. On the New York Stock Exchange they give memorandum but we have no memorandum here passed between buyer and seller.

In broadcasting sales of livestock, we have given the sales made by the Farmers Union, giving the name of the shipper and the price received. We have not done this in the case of sales by the Producers Commission Association because it has its own service. I would not know how [fol. 351] far the competition among the firms goes here at this market, unless they overstepped the rules of the

exchange. They would not be human beings if they did not show some competitive effort. I find that the rules in regard to telegraph, telephone, meals, gratuities, and things of that sort were adopted pretty early, and that they have not changed them much. There has been only one rule repealed since I have been down there, and that was with respect to certain provisions for group livestock insurance.

[fol. 352] J. H. MERCER, a witness, called by the Government, after being sworn, testified as follows:

My address is State House, Topeka, Kansas. I am the Livestock Commissioner of the State of Kansas, and am secretary and general manager of the Kansas Livestock Association. I appear here at this hearing representing the Kansas Livestock Association which is a mutual organization made up largely of farmers, livestock producers of the State of Kansas, with some outside membership in four or five other States. The Kansas Livestock Association has since 1914 been interested in anything that would have to do with the betterment in the interests of the Livestock industry. Every year since the reorganization in 1914 they have passed a resolution directing its officers to keep in touch with the transportation and marketing costs of the industry. At a recent meeting, on the 12th of November, a resolution was passed directing Mr. Jesse Harper, who is president of the organization, and myself, as secretary, to appear at this hearing and take any part it was thought advisable to take.

I have been engaged in the livestock business as a farmer and feeder of meat animals since the early 90's, in Kansas. Over that period, I have been shipping to the Kansas City market very largely. I have made a few shipments to St. Louis, St. Joseph, and Wichita, and one or two to Chicago, but most of my business has been on the Kansas City market. Seven years of that time I devoted mostly to the buy-
[fol. 353] ing, selling, and shipping of cattle and hogs to that market. In 1916 or 1917, I sold out my farm interests and have not handled livestock regularly since that time. I have handled livestock along in small quantities, and I have a little herd of cattle on hand now. In the days when

I was actively engaged in the business of feeding and marketing livestock, I was on the market an average of once a week. On several occasions I have sold livestock on the market myself. I am at the Kansas City market quite often and keep in close touch with it all the time. I went to St. Joseph and Wichita with my livestock, but did not go to St. Louis or Chicago. I bought a good many cattle and hogs at Wichita. I have been on the Omaha market during business, and have been on the Chicago market. I don't think there is any general difference as to the conduct of the business on these markets I visited, but there is quite a difference in the qualifications of the individual livestock salesman and buyers. We have not much difference as far as the salesmen are concerned or their methods. Of course, a big market like Kansas City has more well established plans or methods of handling livestock than a smaller market, but they have their firms that are outstanding, the same as in most any line of business. It is my opinion that there are firms of lesser ability on those markets, that is, there are outstanding firms at Kansas City and also firms of lesser ability. There is probably some little difference here from Chicago, Kansas City is one of the largest feeding cattle [fol. 354] markets in the United States. We have a variety of cattle that comes to this market, considerably different from what goes to Chicago, although Chicago is a little different from here with respect to some other branches of the cattle business. Many more of the canner kind of cattle go to Chicago from the dairy breeds than come here. We have a greater variety in different classes of cattle that come to Kansas City than they do at Omaha. For a good many years the Omaha market was the recipient of a larger aged animal than we have here. Conditions are changing now. I would not say that it is more difficult to sell cattle at Kansas City, but there are elements that make it different. There is more sorting to be done than I think would prevail at Omaha. It is my opinion and the opinion of our organization that there should be a reorganization of the exchanges tributary to our State's livestock business. We believe that it should be done in the interests of the industry and efficiency, and perhaps economy. The only competition now that prevails at our public market is the competition of efficiency and service. We feel that there should be some authority that would assume jurisdiction in removing the unnecessary number of commission firms. I am not going

to suggest the number of firms that should prevail at the Kansas City market. It should require some study and investigation. If the number of firms were reduced, consolidated, or whatever plan might be devised, it would increase the efficiency of the service. Our association did not [fol. 355] join the American National Livestock Association and other organizations in filing the complaint with the Secretary in 1922, but it did start in on a conference program to establish a sales agency program at this market. We started in to go over with the commission firms' representatives at the conference the correction of certain irregularities and the changing of exchange rules. Stipulation was made to submit the matter to arbitrators, and we have not taken any specific action with respect to undertaking a plan of that kind since then. It is our opinion that the Packers and Stockyards Act covers the situation to the extent that they could come to an agreement and approve a program that would be binding. We undertook to establish a program of this kind at the market at Wichita. It was contemplated that the 16 or 18 firms there would be consolidated into five or six firms. We accomplished that down to seven firms, providing that those firms would be protected against the competition of people coming back into the business after the consolidation. We could not do that, and the Secretary of Agriculture got an opinion from the Solicitor of the Department that it could not be done under the law.

There should be fewer people in business, and there would be fewer people by consolidation. In such a consolidation, the interested commission persons and the producers who would be interested in such a program would in time be able to establish firms made up of the highest class of men who know the business. I am not casting any reflections on any one engaged in the commission business. I [fol. 356] know that we have what we call small firms which have outstanding sales agencies connected with them. I am personally acquainted with men who are engaged in the selling of livestock that have never made an actual study of the value of the product they are selling. They are not competent. We maintain that a sales agency should be well equipped, and should have as much knowledge of the value of the product he sold as the buyer of the product. The packing industry will not employ buyers who have not had

years of training and been apprentices under the best and most skilled men.

After the program is established of standardizing sales agencies they should be protected, and no sales agencies should be admitted on that particular market unless there was a proper showing made that they were needed there. If there were a reduction in the number of firms and people who are engaged in the livestock commission business at Kansas City, it is my opinion that they could still handle the business and very much better than it is now being handled. I would say that at least 30 or 40 firms could handle the business.

In my duties I am given a free hand to interest myself in any project which affects in any way the livestock industry. I am subservient to the organization as an official of the State. The Kansas Livestock Association names the Livestock Sanitary Commissioner. We work forces of the State and the organization right along together, and we [fol. 357] advocate many projects, such as better breeding, better health conditions of livestock, the transportation problem, and the marketing problems.

Cross-examination:

We have not been on record as opposing or suggesting any change in the rates established by arbitration. We have not taken any action other than send our annual resolutions to the Secretary. No specific mention has been made of rates or charges. We approve anything that would better the conditions of the industry. I would approve the cancelation of memberships and the issuance of no new memberships by the exchange. I would not approve the practice of registering a market agency in the commission business who had confessed misapplication of proceeds belonging to shippers, and had been expelled from the exchange. I know my association would not. We feel that the Packers and Stockyards Administration should take into consideration the conditions on a market, not arbitrarily establish any policy until a thorough study and investigation are made of the business; that all the rules of exchanges and cooperative organizations should be considered, and as a result of policy and program established on that market. Our association disapproves of a policy, if such a policy has been pursued, of permitting registra-

tion of any one who may apply to do business. As I understand it now, the department or the exchanges do not prevent the opening of new firms at any of these public [fol. 358] markets, providing one makes the application and can furnish the necessary bond.

In addition to expert sales agencies, there should be men of executive ability and competent employees of the various kinds required.

On behalf of my association I stipulated to leave the complaint to arbitration, as a result of which the present rates were established. We base our conclusions on this proposition of establishing and protecting those in the business along the line of our banking law of Kansas. I know of no questions that were ever raised that the existing rates were not legally and lawfully established. It is my understanding that they were approved by the Secretary of Agriculture. Rates were also fixed at Chicago in that proceeding. At Chicago the minimum and maximum were 17 and 21 dollars per car on cattle, and at Kansas City they were 15 and 19 dollars per car. I have heard statements from shippers that they felt that transportation and marketing costs were too high. We have not submitted any complaint as far as our organization is concerned.

The membership of our organization handles at least 75% of the meat business of our State, and I would say conservatively that they ship 85% of that output to this market. The packing and distributing of the products are indirect costs that we know little about. We know what the yardage charge, commission charges, and transportation charges are. Just what part of the consumer's dollar goes back to the producers, I do not know much about those [fol. 359] things. It is our opinion that the cost price of the raw material is in most all instances below what it should be compared with the cost of the finished product. It would be interesting to our association to procure an analysis of those percentages and a trend from year to year, and the relation of those percentages would have some bearing on the question of the reasonableness of the several costs.

I am president of the Kansas Livestock Show at Wichita, and I know that institutions of that kind are of great consequence to the industry. I think the giving of a thousand dollars a year or a little more to the 4-H Calf Club Boys and Girls in vocational education is wisely expended.

I know all about the service in connection with the tuberculosis eradication work of the Kansas City Livestock Exchange. The service in Kansas is done under my direction and in cooperation with me as a sanitary officer. I do approve this service which is of considerable benefit. They are engaged in the eradication of contagious and infectious diseases. As far as I know of the methods of remitting proceeds of sale I see nothing wrong with them.

Qualifications of Salesmen

We have submitted a proposition to the Administration and also to the Federal Farm Board in regard to the creation of a committee to pass upon the qualifications of the sales agency. The range in value is much higher than it [fol. 360] used to be. I feel that the sales agency of meat animals is highly specialized, or should be highly specialized, and the best of agencies furnish the market. We have got them and we ought to have something thrown around all of that to eliminate these inefficient people from interfering. The responsibility of a salesman has increased as this range of value has widened out. The buying has always been pretty well specialized. The packers buy different from what they used to, as far as cattle especially are concerned. I think it is pretty well established that these inland central markets for many years have been the objective points for feeders wanting cattle for feeding purposes. The great bulk of our cattle are purchased at these markets, in these sections that produce feeding cattle. That is what attracts the Eastern people to this market and to St. Joseph, more than to any of these other markets for their feeding cattle. They can get any kind of an assortment. I think as long as we have this plan of marketing that the scheme should be followed, and for the protection of the producers it is very essential to have orderly markets. The Kansas City market is the basis of the price fixing authority in this entire unit of the country. A wide variety of climatic conditions and feeds produces a variety of grades of livestock, particularly cattle.

Redirect examination:

The representatives of the four large packers, Armour, Swift, Cudahy and Wilson, purchase the larger quantities

[fol. 361] of the finished product on this market than any other unit of any size and, of course, they are all trained and skilled men. The salesmen who come in contact with these skilled packer buyers should be equally skilled.

Interest and Exchange

My viewpoint would be that any charges of any kind or character having to do with the commission business, reflecting in any way direct to the commission charge itself, should not prevail if it could be eliminated. If Fred Olander would accommodate me by buying me a bunch of cattle and shipping them out to me, and sending me an account sales, investing his money from two to five days, and that privilege would reflect itself in the commission he charged me, then it should be eliminated.

For example, ninety-five per cent or more of the people of my State endorse almost every project conducted by the American Royal, yet if any of the expenditures of that institution reflect itself in the yardage charge down there, it should be known. Therefore, if a charge or a credit reflects for or against the commission charge, then it should be eliminated if it is possible to do so.

Solicitation

I am familiar in a general way with the solicitation of business done in the country. I think personal solicitation is done largely to get shipments. It is an advantage to the producer and shipper in a way. The livestock com-[fol. 362] mission merchant is in personal contact with the business every day. He may come out to my feed lot to see my cattle, and he has seen a like kind of cattle selling right along. If he knows his business, he can tell me approximately what my cattle will bring. That is first hand information to me that is useful. When he did come to see me, naturally, he would ask me to ship my livestock to his firm. Of course, there is some expense entailed in it. I feel sure that personal solicitation is of far greater consequence than their bulletin solicitation or advertising. I do not know what they charge up as expense, but I know it is expensive to them. I think it is an advantage to the producer.

Recross-examination:

Anything that has to do with, or reflect in any way any connection with the commission charge, should be well known to everybody. I have known commission merchants that have come to the country and made purchases on their own initiative. I do not think that it should reflect anything as to commission charges. That is a speculative proposition. If you, as a commission merchant, maintained a large working capital in order to accommodate me, as a country buyer, and by reason of that fact the charges you made got to me indirectly as a charge of the business and was reflected in the commission charge, I think it should be eliminated. I think that the proposition of accommodations to buyers can be so eliminated that the purchaser would have the money or its equivalent if he so desired. All banks receive drafts, deposit them as cash, [fol. 363] and charge no exchange on them in most instances as I understand it. I know some banks would not give you credit for your drafts, they would wait until a draft is paid. The general rule of business down here is that the commission companies who know their customers will buy the product and ship it to them and send them a bill. They don't make a draft. If the purchaser instructs them to make a draft, I presume they mostly do it. If that is included as a part of this commission charge, and it can be eliminated, it ought to be. I think it could be because you can demand the cash if you want to. Buyers could bring in the cash or a letter of credit or something of that sort. If I did come down here to this bank and deposit a draft that was issued to me, or deposit a letter of credit, in all probability that bank would not give me a checking privilege until it had time to investigate or return that draft to the origin. I believe in the theory of requiring bonds of market agencies.

[fol. 364] B. C. Biggerstaff, a witness called by the Government, having already been sworn, was recalled to the stand and testified as follows:

Redirect examination.

These truck men try to get a back haul to minimize the cost of the inbound haul, and it has extended our trade

territory on livestock. The increase in hard surface roads has had the effect of increasing the volume of livestock trucked in to the Kansas City market. It has opened up country and fostered other markets that have not been very prominent. It has put an emphasis on places like Springfield. There is a small stockyard at Springfield. Since I have been secretary the question of the Government making regular audits of the books of the market agencies at the Kansas City market has never come up. There has been both a reduction in personnel of the firms engaged in business and some people have gone out of business. We started out the peak of 1930 with 60 member firms operating under permits of the Kansas City Livestock Exchange, under its own rules, not counting the cooperatives and independents. We revoked the permit of one firm and the other firm discontinued business and went into the employ of another firm. We had one broker to fail and that reduced the number to five. That made a reduction in 1930 of two commission firms, one order buyer, and one broker. The reduction in number of firms has reduced the number of people who are operating as members of the Exchange. [fol. 365] It has reduced the working force there and the work has centered in fewer people. I would prefer that everyone draw his own conclusion as to whether that has been advantageous to the men who are left on the market or the shippers.

[fol. 366] M. Y. Griffin, a witness called by the Government, after being duly sworn, testified as follows:

My address is Merriam, Kansas. I am in charge of the local office of the Bureau of Agricultural Economics, Livestock, Meats and Wool Division, United States Department of Agriculture. The office is located in the Exchange Building. I have been the head of that office eleven years. I have been with the Department thirteen years. The local office is purely a service organization the purpose of which is to gather and disseminate livestock marketing information. There are eleven people in my office.

A livestock market reporter is assigned to each branch of the market, namely, cattle, hogs and sheep. As soon as the trading opens they gather the actual sales and the market trends by direct contact with salesmen and buyers.

I cover the sheep market. The office is opened at 5 o'clock, when the estimating clerk calls the various railroads for a report on the livestock to be delivered for the current day's work. That estimate is released at 6 o'clock. It is posted on a bulletin board in the lobby of the Exchange Building, transmitted on leased wires connecting all the principal livestock markets, supplied to the commercial telegraph companies, broadcast by radio, and made available for anyone interested. The leased wires of the division connect all the principal livestock markets and the estimates of receipts and market prices and trends are exchanged several times daily between this market and the [fol. 367] other markets. We receive reports from other markets shortly after 6 o'clock in the morning and that information is also made available on the bulletin board here at Kansas City. We start out to gather actual market information soon after 8 o'clock. We get information as to actual sales as they are made and the information is obtained with respect to the various classes and grades of the same species of livestock. Our office has the definite grades and classes quite well standardized and they are generally well known and used in the trade. We make our first broadcast at 8:07 in the morning. That is the estimate of the receipts at Kansas City and other important markets. The reports are broadcast directly from the office through cooperation with the station KMBC at Kansas City. We broadcast for five minutes. The broadcast covers pretty thoroughly eastern Kansas, Missouri, southern Nebraska, southern Iowa, parts of Arkansas, Oklahoma and Texas. The information which we give to the telegraph companies is known as the "C. N. D. reports." It is available to the customers of telegraph companies at a considerably less rate than the regular message rate. This is a method by which the telegraph companies supply their customers with market information, not only livestock but other market commodities, at stated periods throughout the day. That is distributed to the telegraph companies pretty generally by 6:30. The next broadcast is at 9:30. That includes the opening hog market at Kansas City and the opening tone of the hog market at Chicago. That is a five minute period. The trends of the cattle and sheep market are not [fol. 368] established at that time. We give out information with respect to cattle and sheep at 10 o'clock on the

leased wire and the press wires. There is a broadcast period at 11:42, and the last one is at 2 o'clock. The development up to that hour on the complete Kansas City Market is disseminated, giving market trends on cattle, hogs and sheep, with prices, and also the Omaha and Chicago markets. In the C. N. D. reports service the receipts figures or estimates are available shortly after 6 o'clock, the opening hog market at 9, the opening cattle, sheep and hog market at 10, the complete market about 11:15, and the closing markets at 12:30. The information which we furnish covers the field rather thoroughly. We give the top prices and the range of sales on the various grades and weights of hogs and grades of cattle. In giving out information we do not identify any shipment as to ownership. Information is marked up on the bulletin board after the first record in the morning is made of incoming receipts, at 9, 10, 11 and 12:30. The Kansas City market is posted as it develops, and reports from other markets covered by the leased wire are also posted. We get out a daily mimeographed report on the market conditions, receipts, and the trend. It is mailed to a list of people around 3:30 P. M. each day. It goes to farmers, producers, and feeders. The only requirement is that somebody needs it and asks for it. We have a mailing list of around one thousand. Patrons living in Kansas and Missouri are the heaviest of the mailing list. These reports include information from other [fol. 369] markets that are taken from the leased wire reports. However, it specializes on Kansas City. The Kansas City office has no meat market report. We include in our report information in regard to the dressed meat market in Boston, Philadelphia, New York and Chicago. That information is taken from the leased wire twice daily. That information is also disseminated by radio. We have a separate report for the information on the dressed meat market. Our mailing list for that consists chiefly of retailers, jobbers, packers and numerous producers. An advance estimate of the receipts for the next day is released at 12 o'clock noon. We get reports from the various railroads of the stock that is in transit and due to arrive the next day. We also supply information to the newspapers and the press association. The press association report is supplied around 11 o'clock each day, and again the closing report about 12:30.

Cross-examination:

My work does not have anything to do with crop conditions or anything of that sort. It is devoted solely to livestock market reporting and we disseminate reports of wool and meat. I think supply and demand go into the prices today. By demand I mean the outlet for the products. At Kansas City it consists of a demand from the various packers, shippers, order buyers and speculators. We have records of the receipts of livestock that are purchased either in the country or other markets who have their plant at Kansas City. It is entirely probable that if they derive [fol. 370] any substantial amount of livestock in that way it has some effect on the amount that the packers buy on the open market. We disseminate the information in regard to the receipts of direct shipments to the stockyards. I do not know what proportion of the directs is received on the stockyards and what proportion moves otherwise direct to packers. The number received outside of the yards would be considerable larger than those inside of the yards. The figures as to the total number received at Kansas City direct from day to day are available but they are not published daily. I can procure the information in regard to the direct receipts and the purchases by packers on the open market and will do so.

Sheep and lambs are divided into prime, choice, good, medium, common and culls. The locality that they originate from or the locality in which they are fed is frequently mentioned as a guide to interested people in the country.

The condition of the sheep or lamb determines whether it is going back to the country for stocker and feeder purposes or whether it goes for slaughter. The weight of the lamb at some seasons of the year is an important factor in determining its value and the fact that it carries a fleece on its back or the fleece has been removed also makes a difference in the price. When wool is extremely high the character of the fleece will make a difference. There is a diffrence arising out of the age of breeding ewes. We divide [fol. 371] breeding ewes into yearlings to three years olds, and three year olds and up.

GEORGE G. CROSSAN, a witness called by the Government, after being duly sworn, testified as follows:

My address is 465 Livestock Exchange Building. I am manager of the clearing house at the yards which is maintained by the Kansas City Livestock Exchange. I have been manager for a little over two years. The clearing house is a place for the exchange of bills, for checks, really. The commission men and members that belong to it bring their checks and their bills, packers' tickets and any other tickets that they might have to be distributed there to the members. Each member has a box. The Producers Livestock Commission Association and the Farmers Union clear through the clearing house. There are people who clear through brokers and they are not members but the broker is. The clearing house is a clearing house for the entire market. It opens at 8 o'clock and closes at 5:30 on Monday, Tuesday and Wednesday. On Thursday and Friday it closes at 5 o'clock and Saturday at 12:30.

Some days most of the bills will come in before 2 o'clock, other days more will come after 2 o'clock. It depends upon the run of cattle and the buying of them. More bills come in on Tuesday than on Monday even though the peak run is on Monday a lot of times. On Wednesday I don't believe [fol. 372] there would be very much difference. On Monday there aren't any bills that come in up to 11 o'clock. I have a box in the door and sometimes there will be quite a number of bills to distribute that were put in the night before.

Cross-examination:

When trading is slow it has a tendency to slow up the presentation of these bills at the office of the clearing house. On Friday we receive most of the bills before 2 o'clock. That is because the receipts are lighter. The market agencies want to get their bills out just as quickly as possible every day. The reason so many bills are carried from Monday over to Tuesday is that the livestock is not weighed until after too late to get the bills in. The buyers buy late. I have noticed during my experience on the market that many market agencies are working at the time I leave the yards. They could not get along without working in the evening. I think that is because livestock cannot all be weighed up until late in the evening.

Redirect examination:

When I speak of market agencies I mean commission men, traders, and brokers who deposit their bills at our office for collection. They nearly all of them have their offices in the same building that I do.

I do not know how long the people in the various offices keep going after I leave at six o'clock. I do not observe all of them, because some of them probably would not be [fol. 373] working. On busy days it would be very rare if the people left the offices of the market agencies before 5 or 5:30 in the afternoon. I have been there long enough to know the firms that are prompt. Some of them will pay just as fast as they get their bills, others will wait till the time and then bring their checks in a lot of times around 3:30.

[fol. 374] J. C. VANCE, a witness called by the Government, after being duly sworn, testified as follows:

My address is 260 Livestock Exchange Building. I am office manager of John Clay and Company, a market agency engaged in the livestock commission business. The main office of that company is at Chicago, Illinois, and the business here in Kansas City is a branch. My general duties are overseeing the general office work and particularly the loan business.

I have charge of the work of the keeping of books and records and sending out bills and correspondence. We may get a load of cattle, hogs, or sheep, particularly cattle, that may be on the yards a day or two before they are sold. During that time we have been presented with the freight bills and feed bills and numerous other items that naturally go with that transaction. When a carload of cattle is received in the stockyards we get a notice of that from the yardman, who comes to the office early in the morning with a complete list of what has come up to that time. He comes up from time to time as the arrivals come in during the forenoon. We have a form that we set these shippers down on, showing their names, addresses, kind of livestock, and banking instructions. If a shipper wanted us to advance him currency at that immediate time, we make a notation of that on this sheet. Any other special requests or instruc-

tions from the shipper are noted on this sheet. (Witness here reads a number of letters from shippers asking to be [fol. 375] kept posted on the market and to be furnished a market paper.)

We simply tell them that we have discontinued sending out the daily market paper gratis, and we tell them that we would be very glad to send to him our own market information. The head office of John Clay and Company issues a market paper at Chicago. The branch offices furnish that office with lists which they desire that paper sent to and it is mailed out of Chicago. The distribution of that paper does not come under the recent Exchange rule. It is regarded in the same class as circulars gotten out by individual firms, only it is a great deal broader in scope. Ordinarily freight bills are presented to us by the Western Weighing and Inspection Bureau. Those freight stubs are part of the railroad companies' way bills, showing the origin of the shipment, the shippers name, the car number and initials, consignee, contents of the cars and the minimum weight with the rate, and a stamped notation showing the fill allowance that a particular car is entitled to.

A car of livestock coming into the yards is fed and watered before it is sold and weighed. To cover that additional weight they allow 500 pounds a car in some instances, and 800 pounds a car in other instances, depending on the length of time the cattle have been in the car in transit. From that freight stub our man refers to that daily record sheet in order to see if he has a record of the particular car. The bill is then passed on to the account sales man. The stockyard company bills us for their charges at the same time they bill us for the railroad com- [fol. 376] panies' freight charges. We may have collected these yardage charges twenty-four hours before we are billed for them.

Freight rates are paid to the stockyard company and it pays the railroad companies. We are not billed for stockyard charges before the livestock is sold.

After the sale of a load of livestock the scale ticket is presented to our office in duplicates as soon thereafter as possible. In order to expedite matters we figure those tickets as promptly as possible, one man figuring the original ticket and another man the duplicate ticket, using calculating machines as a rule. Then a bill to the purchaser is

prepared, which we try to get to the clearing house as soon as possible in order to receive payment from the purchaser on that day. From the duplicate ticket the account sales is made up and the same speed is used in trying to get that account sales out on the same day on which the livestock is sold. We have a scale ticket with two or three drafts on it. In case of a single ownership car weighed in three drafts, those drafts might be on one scale ticket or they might be on three different scale tickets. We do not have the tickets covering the full car before we bill the purchaser. One purchaser might buy all three drafts, or there might be three different purchasers. If some of the drafts were large they would be weighed on the high line scales whereas individual animals would be weighed on the jack pot scales. If the cattle were sold at the same time to the same pur- [fol. 377] chaser the probabilities are they would appear on the same ticket, but if they are sold to the same buyer at three different times they are more apt to be on a separate ticket. We bill the purchaser as fast as the tickets come in. The scale ticket shows whether it is an original or duplicate ticket. On the ticket appears the name of the Kansas City Stockyards Company, the number of the scale, the registered weight, the name of the seller, name of the buyer and the account for which the purchaser has made the buy. They have separate tickets for cattle, hogs and sheep. The weight is written out and then the prices marked on by the seller. The owner's name and any marks of identification are written on the ticket. The salesman also marks on the ticket whether the livestock is of the steer or cow class, or whatever it might happen to be. The ticket is dated and there is a place provided for the weighman's name or initials. There is also a place to make explanations and state the amount of money.

The salesman places the price of the animals on the sales ticket and designates the kind of animals. The office people apply the price to the weight and make the extension. From that the bills *is* made out and we take it to the clearing house, providing the purchaser has a box at which to receive these bills. If it happened to be a country purchaser the bill would be retained by our office and direct settlement would be made with the country purchaser. We might have the account sales made up and the money in the bank to the shipper's credit before we got the payment

[fol. 378] of that bill back from the clearing house. As fast as the full contents of the car are assembled at the office, we start making the account sale. The account sales provides a place for the date and the name of the shipper, the number of the account sales, shipping point, post office, name of purchaser, classification of livestock, weight, dockage, price, amount the total, and the gross proceeds. There is also a place for the car number, the weights on which the freight is assessed, the rate, the amount of charges, charges outside of actual freight, such as bedding or feed en route, yardage charges, service charges, hay charges, bedding charges, corn, inspection, brand inspection, fire insurance, transit insurance, National Meat Board deduction, commissions, net proceeds. Then there is a place to show the disposition of the proceeds. We have a long form and a short form of account sales.

Government Exhibit No. 10

Government Exhibit No. 10 is the form of account sales used which is prepared in duplicate, one copy of which is retained as our record. Whereupon Government Exhibit No. 10 was received in evidence.

Government Exhibit No. 11

Government Exhibit No. 11 is a copy of a form of account sales used for cooperative shipments. It is made out in duplicate. Whereupon Government Exhibit No. 11 was received in evidence.

[fol. 379] Government Exhibit No. 11-A

Government Exhibit No. 11-A is a small form which goes with the form shown in Government Exhibit 11. It is a small form that takes care of the individual owners in a cooperative shipment. Wherever the large form is used then these little forms accompany the big master sheet. One of the little forms would be used for each shipper in the cooperative shipment. It does not contain all the information in Government Exhibit No. 11. It pertains to the specific owner of the livestock represented by that form. It just shows the proportion of those charges that are applicable

to the contents described on the form. I do not think that our firm makes a duplicate of this small form.

Whereupon Government Exhibit No. 11-A was received in evidence. Government Exhibit No. 11-A is used in those cases where we have charges that are outside of the usual stockyard charges, such as manager's commission, sinking fund, and other home charges. Where we do not have those home charges we use the regular form identified as Government Exhibit No. 10. Government Exhibits Nos. 10, 11 and 11-A are the only forms which our company uses in rendering account sales to shippers. Government Exhibit No. 11 is used very infrequently and for very complicated shipments. In the majority of cases our firm follows the usual custom of making remittances by depositing in the bank to the credit of the shipper. If we remit by check that remittance is made in the form of a bank cashier's check or [fol. 380] perhaps by what is known as Chicago or New York Exchange on some bank. As a rule we use personal firm checks in remitting for drive-ins. We usualy follow the owner's instructions in that respect. When we are requested to send by check, we send a personal check when the amount is small.

The account sales may be made up and mailed out the same day the sale is made, and that time may be after banking hours, in which event the deposit would have to be carried over and made in the morning. In the meantime the account sale has probably reached the shipper by the time, or very nearly around the time, the money will go into the bank. We do not have much complaint about our bills being paid promptly. We endeavor to get these bills into the clearing house in time so that they will be paid on the day the sale was made. Frequently sales of stocker and feeder cattle are made after 2 o'clock. In such cases the purchaser has until 10 or 10:30 the next morning to pay for those cattle. In the meantime we have rendered the account sales and got the money in the bank. That frequently works a little difficulty on our bank account, necessitating our calling on our Chicago house for help in the way of funds.

John Clay and Company makes a business of making loans to livestock producers. A good many of the loans are handled right through our office here. We keep a record of these loans on our loan records.

All packers pay on the scale ticket except Wilson and [fol. 381] Company, and they pay on a bill. When we receive these scale tickets stamped in that way we deposit them in the bank and our account is immediately credited with the amount of money. When we sell to an order buyer or trader, he usually gives a check. If it is a check on the Kansas City bank we get immediate credit for it. If the check is drawn on an out of town bank, we get credit for it immediately but the bank has a process of analyzing your account in which they show that item outstanding against your account until it is actually paid in funds that are available in Kansas City. One of the purposes of that is to charge some interest on our account. They charge interest when those items exceed our realized balance. They do it whether it is a profitable account or not for the reason that they do not allow any credit for the days on which you have a realized balance. They render a statement at the end of each month showing the book balance for each day of the month. In an opposite column they show the total of the outstanding items. In another column they show the daily realized balance. That may be a debit or a credit. Where the total of the credit balances exceed the total of the debit balances they charge interest on the debit balances. They allow no interest on the credit balances.

A good many times we make remittances to the shipper before we have made up the account sales. It is not an unusual occurrence to put an amount of money in the bank [fol. 382] to the credit of the shipper or have it wired for his credit before anything has been sold. That is the nature of an advance. No interest is charged to our patrons for those advances. The final remittances awaits the making up of the account sales. The Kansas City Clearing House Association furnishes us with the Kansas City correspondent bank, who is entitled to receive credits for certain out of town banks. As a matter of fact an out of town bank might have two or three Kansas City banks that would be entitled to accept deposits for their credit. From our bank we obtain what is known as a country deposit slip, which is made up in triplicate, showing the date, by whose direction the deposit has been made, who made the deposit, the amount, the name of the Kansas City Bank, and the name of the bank to which credit is being extended. We have three banks at the stockyards, and they are designated by

other Kansas City banks as being their stockyards representative. The uptown bank may let any one of the three banks at the stockyards accept these credits for them, and the original of this deposit slip is mailed out by the stockyards bank to the bank to which the money goes. The names of the stockyard banks are the Drovers National Bank, Stockyards National Bank, and Interstate National Bank. Not all of the Kansas City banks have designated a stockyards depository. These three stockyard banks clear on each other. Unless some later explanation is to be made, when the remittance has been made and the account sale mailed, the transaction is closed.

[fol. 383] We have never made any study of the time involved in the various functions of office work. We have three employees that devote their time to making account sales, account purchases and remittances. One man devotes practically his entire time to making up account sales and the work incidental thereto. Another man works almost exclusively on the purchases. Another man handles the remittances. They give practically all their time to that work and the ordinary performance of the bookkeeping, indexing, figuring tickets, making deposits, and checking up remittances. In the accounting end of our work we have four people and a fifth one we use part of the time. We have five people in the stenographic and advertising end of the business. Referring to the audit of John Clay's books, made by the accountants for the Department of Agriculture, on Schedule No. 2 thereof the three employees who make up the account sales and get out the remittances are Nos. 23, 24 and 25. Man No. 25 is not the same one we had when this audit was made. Since that time there has been a man on full time. A different man acting in the same capacity. His salary is $25.00 per month over the salary shown for Man No. 25. These three men are assisted by other-. I frequently lend my assistance to them. The salesmen do not help in this work.

Cross-examination:

John Clay & Company is a partnership. Clay, Frank H. Connor, C. A. Kleman and Allen F. Wilson of Chicago, and [fol. 384] Charles G. Smith of Denver, are the partners. They devote their time and energy actively to the conduct of the business as it is conducted on several livestock

markets of the country. Mr. Clay is not as active now as he was years ago. He is at the up town office every day in Chicago. I think Mr. Clay organized his livestock commission business in Chicago and Omaha in 1886, Kansas City 1894, Denver in 1895, Sioux City in 1899, St. Joseph in 1901, and other offices at subsequent dates. Mr. Clay has been connected with the livestock industry for fifty-five years. He is generally regarded as one of the best informed men on livestock matters in the United States. All the other four partners were connected with the firm when I started to work for it twenty-eight years ago. They were not all partners at that time, but they were either partners or employees. I think the connection of these men with the business and the time which they devote to its executive management and maintenance of the business is of great value. There is no item of expense shown on our books to represent that item. I would not want to put a valuation on their services. The financial resources and credit of John Clay and Company used in granting of credit and financing of livestock for stockmen has a tendency to increase the volume of our business.

A good deal of my time is taken up in connection with the loan work and the details of it. I am constantly referred to about matters pertaining to the general office work.

We have a freight auditor to whom we pay 5¢ a car on all [fol. 385] the carloads that we sell and this man takes our account sales, checks the freight and when he finds an overcharge he files a claim for it. He handles the whole thing and refunds to the shipper without charge for that service. We file a good many claims for loss and damage to livestock in transit. We handle the less complicated and simpler ones. We sometimes have loss and damage claims that we turn over to claim attorneys who handle them on a contingent basis of 15 per cent. I would not say that we handle a very large amount ourselves. There is no charge for that service. We are frequently requested to furnish a bank or loan company with a copy of account sales which we do on consent of the owner. We collect fees for various associations. Here is a brand inspection tally on which the inspection fee is $1.40 which we are expected to collect on a shipment. There are 121 cattle and calves on this tally sheet, 14 of them are branded. This brand inspection pertains to the 14 branded cattle. On this sheet are instruc-

tions from this brand inspector to hold the proceeds of certain cattle branded until he releases the cattle thus held, either by affidavit of ownership or bill of sale, or something of that kind.

Respondents' Exhibit No. 10

Respondents' Exhibit No. 10, the same being a copy of the brand inspector's tally to which the witness had previously testified, was received in evidence. We usually follow the brand inspector's instructions with regard to weighing out [fol. 386] certain cattle or a certain brand that he claims might belong to somebody else. We render separate account sales for these and usually hold them for a reasonable length of time for the establishment of ownership. We might pay those proceeds to the man who shipped the cattle or to the secretary of the association which the branding inspector represents. These associations do not give us any bond. Different states have different systems of handling those things and our office force must keep familiar with the different methods of the different states. In Wyoming and Colorado the brand inspectors operate under state laws. In the other states brand inspection is conducted through voluntary associations.

One of the special services that is incidental to the business is the matter of a night yard man who receives at the chutes all late arrivals. He is there all night from the time our men are off duty until they go back the next morning. He yards cattle during the night and feeds them if the shipper wants them fed. That service costs us 50¢ a car.

There is a radio broadcasting service which costs us approximately 5¢ a car. Then we furnish horses in connection with our buying business. The buyers and the salesmen all ride and naturally you couldn't expect the shipper to walk when your own men ride so it has become a custom, and has been a custom for a good many years, that horses be hired from the barns. The cost of that horse hire amounts to [fol. 387] $2.00 a day. You will see a buyer start out in the morning with maybe one or maybe seven or eight men riding behind him looking for cattle. John Clay & Company do not have that expense at other markets. We had three horses of our own in 1929. Sometimes a man who has cattle here for sale will ask us to furnish him a horse. If we do not have a horse of our own available we hire one. It is

pretty generally conceded that a horse is necessary in going in and out among western cattle. You could not go into the pen of a load of horned western cattle on foot with any degree of safety. The yards run north and south in length and it is a considerable distance from north to south. The buyers sometimes want to shop around and see all the cattle. The area which constitutes the yard is not a square.

We get out market reports and letters which go out seasonably and our own publication of livestock markets, which is a general review of the markets on which we are represented. The market report is sent to those shippers who request it. There is a service in the way of furnishing transportation to and from nearby feed yards. I have in mind the arrival of a shipment of cattle or sheep at the Prospect or Morris feed yards. The shipper will come to our office and want to go out in the yards. In that case we send one of our men out with him. It is about 10 miles to either station and we make a flat allowance of $2.00 a trip to our employees who use their own automobiles to go out there. Frequently we get a telegram from a man saying that he expects to arrive at the feed lot on a certain day and he [fol. 388] would like to have one of our men go out there and sort the cattle. Sometimes we send two or three men out depending on how big a job he has ahead of him. In connection with appraisal trips, we have a schedule of mileage that we allow an employee, depending on the kind of car he has. These expense accounts are turned in and sent to our financial office once a month. We want to keep these expenses down as far as we can consistent with good business.

Hazards

Last Monday morning we sold 9 cattle. Before we sold them another commission man came to our office with a letter from a broker stating that he had a mortgage on those 9 cattle. A little later he showed us a letter from a lawyer saying he had a mortgage on the cattle. The shipper who brought the cattle in did not seem to know much about it. We went ahead and sold the cattle and had them weighed out very carefully under brand inspection supervision. We naturally held on to the proceeds and still have them. The matter was referred to our attorneys in Chicago. There might have been some liability if this competitive commission firm had not furnished us the information about the

mortgaged cattle. Our firm does not carry mortgage and theft insurance. We did at one time. We were informed by our head office that arrangements had been made with certain attorneys who would handle all those cases now. They were the attorneys for the Hartford people who formerly wrote this mortgage and theft policy. That repre- [fol. 389] sents one of the services which the Chicago office renders to the branch here at Kansas City. No doubt that is taken into consideration at the end of the year in the adjustments of the various office expenses. That particular expense does not show in this audit made by the Government.

There is a hazard every day in connection with accepting payment for purchases on out-of-town banks. First there is the question as to whether the purchaser has the money in the bank and secondly whether the bank itself is in good sound condition. There is also the hazard of buying cattle on order by correspondence. When the cattle get to the destination the man might refuse to accept them and stop payment on his check. Situated as we are we divert this load of cattle to some other market or we might be able to turn it to somebody nearby. If they come back to us we have that extra expense of freight and shrink. There is a liability in the free transportation which we furnish to these feed yards. One of our employees had his automobile demolished in an accident and we allowed him the cost of putting the old car back in shape on the purchase of a new car. If any one of the four or five cattle men with him had been injured there would have been personal damages. We do not carry any compensation insurance with respect to our liability to employees for injuries in the course of their employment. We are not under the compensation law but take our own risk. If an employee gets hurt while in our service we take care of his expenses in the way of medical attention and hospital and at the same time pay his salary. We do [fol. 390] not carry any public liability insurance to protect persons from damage not in our employment. It is my understanding that if a steer should escape and injure someone up town we would be our own insurer.

A rather important liability is the matter of figuring our own freight charges. If we make a mistake in freight or feed it is up to us to collect it from the shipper or pocket the loss.

There is the hazard of losing cattle while they are in the yards. Ordinarily you would file a claim against the stockyard company for it but the probabilities are you would not get anything out of your claim. In spite of the precautions mixes and losses do sometimes occur.

The branding, dehorning or vaccinating charges are usually paid by us and charged to the purchaser on his purchase bill.

I have printed slips which we get out in connection with cooperative or plural ownership shipments and which are filled in in the country, giving the information necessary to the handling of the livestock. This sheet is labeled "Cooperative Department, Disposition of Returns" and it provides space to show the name of the consignor, his post office, bank instructions, manager's commission, sinking fund, and miscellaneous charges. It is ruled so as to provide for information in regard to the home weights and identification of the livestock. That information in connection with the information that goes into the office from the yards is used in making up the account sales. I have a [fol. 391] similar sheet here showing a shipment in which the manager of the association requested us to prorate and send the returns to a bank. That means that we have to make a separate account sale for each owner. It describes 10 owners which will require 10 account sales and it required 21 different weighing drafts. This was caused by mixed ownership and different classifications. On the previous sheet there were 3 different owners of hogs and 10 different owners of cattle in the car. I have another account sale covering 3 drive-in cattle which were sold to one buyer at one price. Only the charges for yardage, insurance and commissions were collected. The commission was $2.25 and the gross total proceeds $197.25. That is the very simplest form of account sale. The next account sale involves the same number of cattle weighed in 3 different drafts at three different prices on which there were dray charges at 25¢ a hundred. That would be next to the simplest kind of an account sale. The commission charge there was $2.25. The next one covers a drive-in shipment of one cattle and 10 hogs. About the only difference in this is that there was a charge for a bushel of corn and an inspection charge which the two previous account sales did not have. This sale was made by a cattle man and by our hog

man. Here is another drive-in shipment covering 21 head of cattle and calves sold in ten different drafts, ten different prices, hauled in by two truck men, each one of whom collected dray charges which our men calculated. It shows hay charges and transit insurance collected for the Hartford Insurance Company. It also shows that the shipper [fol. 392] drew $10 in currency and obtained a check for the balance of the proceeds. The total commission was $12.55.

I have three different illustrations of a straight load, all taken on the same day, and at about the same time. One load contained 38 cattle and was sold in two operations. The carload sold at one price, with one head out at a different price. There were five deductions on that account sale. The commission was $19.00, and the gross proceeds were $2,336.60. The next account sale covered a jack pot load of cattle, consisting of 40 head weighed up in 20 drafts. There was one additional calculation for feed in transit. The value of this load was $1,201.42. The commission charges were $24.00 on that load. The other load consisted of 32 cattle, belonging to three different owners. There were four different drafts, and three different account sales. These cattle arrived on Sunday, and were fed by our man on Sunday and on Monday. There were three different prorations to make, on the freight, feed charges, and bedding charges. The proceeds went back to each individual owner's account at his bank. The total commission was $21.25. Another account sale shows a total of 253 head of sheep arriving in two single deck cars, on which the double deck freight rate was applied on what is known as the "feed-in-transit" billing. That means that there were two calculations of freight charges. There were bedding charges and feeding charges at McFarland, Kansas, of $785.50. In this load there were five different classifica- [fol. 393] tions of sheep.

McFarland, Kansas, is a feeding station about 150 miles from Kansas City. We deduct the feed charges with the freight charges. Our commission was $20.00. The gross proceeds of those sheep amounted to $1,384.69.

Pasture Contracts

We handle quite a bit of work in leasing of pasture. That is done on request of a shipper or livestock man of good financial reputation. Cattle move from Texas, New Mexico,

and Arizona up into the pastures of Kansas in the spring of the year. A man will notify us that he wants grass for a certain number of cattle. We dicker with a man who has the grass, and make what is called a "pasture contract," which is signed by the owner of the cattle and the pasture man.

Respondent's Exhibit No. 11

Respondent's Exhibit No. 11, same being a printed form of pasture contract used by John Clay & Company, was received in evidence.

No charge is made for the execution of this contract. It is a service that we consider incidental to our business, and we have no assurance that the business will eventually come to us. However, we have that object in view when making the contract. Frequently a man will wire us to meet him out there, and we will go out and travel over a good, wide area looking at pastures. Frequently at the request of the [fol. 394] owner of the cattle we will have the freight bills come into our office for payment to see that the proper amount of freight charges has been assessed on livestock moving to the pastures.

Last March a man at the Amarillo convention asked Mr. Reid to get grass for 100 cows, and he told him he did not want to hear anything more from him until he sent him a check for the cows in the fall after they were sold. He got his grass, and we sold the cattle for him, and sent him the money. We follow these pastures from year to year and know how heavily they have been grazed. It is of importance to know that the water supply will be available, and another thing to take into consideration is the integrity of the pasture man. Cattle moving in from these pastures usually come in carlot shipments of single ownership, moving perhaps more than one car at a time, and containing cattle of fairly uniform grade. We collect the pasture charges from the account sales, and remit to the pasture man.

If occasionally happens that our men will look over cattle in the country and appraise their market value, and then they will move direct to purchasers off the pasture. In such cases we get no commission. From 1907 to 1909, the pasturage cost around $4.50 to $5.00 a head. This summer the pastures ranged from $9 to $11 a head in Kansas.

Comparison of Costs

Office rent in 1908 amounted to $105 a month. At the present time it is $260 a month. Telephone exchange [fol. 395] service in 1908 was $18.92. Now it is $64.50. Part of that increase is due to the fact that we now have telephone- in our selling alleys. Our toll bills in 1908 were running around $40.00 a month. In 1929 our telephone bills amounted to a little over $1800.00 for the year. In 1908 barn rent for horses was $15.00 a month, and now it is $22.50. Our city occupation license was $15 a month, and now it is a hundred dollars. (Witness detailed comparison of costs between the years 1909 and 1930.)

There has been a substantial increase in the salaries and wages to the hired help. There has also been an increase in the number of people employed to handle the business in a certain alley. In our cattle yards in 1908 we had three salesmen, a man who sold the fat steers, one who sold stockers and feeders, and one who sold butcher stuff. In addition to those now we have a calf salesman and also a man who acts as fat steer salesman when the regular man is out of town. We were making a good deal more money in 1908 or 1909 than we are now. By that I mean net returns to owners for their services in the business.

Working Capital

Ten thousand, five hundred dollars, would not begin to cover the capital actually used in extending the necessary credit and an amount reasonably necessary to protect against contingencies, emergencies, and hazards in the business. There are many days when our outstanding purchase items will exceed that amount many times over. There have been several days when we have had overdrafts [fol. 396] with our Chicago office that exceeded $100,000. An item of working capital amounting to no more than $10,500 would be grossly inadequate.

Redirect examination:

There is no compensation in the way of salaries for the partners of the firm charged up to our office here. The expense of getting out the market paper is not all borne by the Chicago office. A certain proportion is charged to all of the offices of John Clay & Company at the various

markets. I do not know on what basis it is prorated. Under the heading of general organization and advertising expenses, there is included, in addition to the market paper, the expenses of the general auditor who makes three or four trips a year around to the various offices. Whatever remuneration the partners of John Clay & Company get out of this branch will come in the way of profits, rather than any stated salaries. I have never worked in the financial office at Chicago, and I do not know the basis on which they make the settlements among themselves. Mr. Clay started small, and built up this business to what it is at the present time. (Counsel for respondent concedes that the commission business of John Clay & Company started from a small beginning and it developed later according to the capacity, ability, and energy of those who operate it.

Livestock Loan Business

John Clay & Company charge the regular commercial [fol. 397] scale for interest on loans made on livestock. It is decidedly unprofitable at the present time.

Where there is a cost in addition to the time cost on a check received in payment for livestock, we make an additional charge.

It was not very many years ago that we never had to worry about collecting inspection fees for any association. They collected their own fees. Then they got together and devised this means of collecting their fees and passed it on to the market agencies.

We have not suffered any personal injury claims by reason of injury to automobiles going to and from the feed yards. I presume the reason we do not carry any liability insurance is that it is more economical to carry our own risk. It is infrequent that a steer gets out of the stockyard and goes uptown. I do not know that it has been established that the steer which did the damage at 10th and Main Streets actually got out of the stockyard. It does not happen very often that we lose livestock in the stockyards. I do not know that we can insure against that risk.

There is an item appearing in the audit of deductions which I think covers the losses which we sustained last year in connection with buying cattle on order. Another one which I mentioned is reflected in this audit under the heading of bad debts, which represents a loss we sustained on

account of paying a draft in advance of the arrival of the shipment to market. I remember a loss which we sus- [fol. 398] tained about 1918 or 1919 of some $4,500 in connection with the selling for some stolen sheep shipped from New Mexico. Since that time I do not recall any losses in regard to stolen sheep and stolen livestock. About that time the Hartford Fire Insurance Company came out with this mortgage and theft policy and we have been subscribing to that form of protection since then.

John Clay and Company handles quite a large volume of stocker and feeder cattle. The big runs come during the months of September, October and November.

All expense in connection with pasture leasing appears on our books in this office. The big bulk of the leasing is attended to by our manager. I would not be able to state how much of his time he devotes to that. The cattle that come to the leased pastures are largely range cattle. We have not segregated expense incident to pasture leasing.

On Schedule No. 2 of the audit of our firm the people who attended to the loan business were Nos. 1, 22, and 9. They do not give their exclusive time to the loan business. No. 22 gives more time to it than the other two. The loan business is pretty active during the spring and especially during the fall, continuing pretty well through the winter.

The amount of commissions collected and the value of livestock bought and sold for the years 1923 to 1929, inclusive, are as follows:

[fol. 399]

	Amount of commissions	Value of livestock bought and sold
1923	$162,646	$14,342,462
1924	153,370	14,450,485
1925	150,451	16,652,745
1926	153,278	16,902,371
1927	138,325	17,182,684
1928	145,781	19,751,877
1929	148,669	20,317,697

The net return for 1923 was more than in 1929 by $9,400. I do not have the figures for 1922.

I have no opinion as to the amount of capital necessary for the conduct of the commission business alone at this branch.

Recross-examination:

The negotiating of these pasture contracts is undoubtedly an aid to this market. It tends to increase the volume of commerce in livestock as it passes through the Kansas City public stockyards.

That business is for the most part all straight carloads and all one ownership. The more of that class of business you can handle the more you are going to reduce your unit costs. It is the class of business, in respect to cattle, that suffers the greatest degree of exposure to the influence of direct movement from the owner to the feeder. There is more competition on them at the yards.

Working Capital

There are a number of days during the year in which we have to draw on our Chicago account to protect our account [fol. 400] here at the bank, and those amounts may vary from $25,000 to $150,000. I recall one day this year when I had our Chicago office transfer $200,000 by wire. Of course, our business does not require that much cash working capital every day in the year, and when not needed in these peak movements the extra capital is employed productively in the loan business.

Demand for the cattle is the most vital factor in bringing livestock to the market. Anything that would interfere with or lessen the competition or the movement of buyers, or the volume of business, would be detrimental to the movement of livestock through the market.

A good deal more money is employed in the livestock loan business than is needed for working capital in our commission business, for the reason that whatever funds the firm has they are handled out of the financial office at Chicago.

[fol. 401] Edward W. Elliott, a witness called by the Government, after being duly sworn, testified as follows:

I am engaged in the livestock commission business at the Kansas City Stockyards. Mr. Swain and I are partners in the firm of Elliott, Swain & Company. This firm handles all species of livestock other than horses. We have the sheep sold by a party who sells for a number of different

firms. I sell the hogs. This firm has been in business 11 years. I have been a partner in some commission firm for 27 years. For about 6 years prior to that I worked as a yard man. I went to work in the yard in 1894 as a hog salesman. My services as a salesman were unsatisfactory and an arrangement was made whereby I assisted another firm in weighing livestock and that firm sold my hogs. Later I went to work as a helper to the senior member of the firm who was selling hogs. I think I worked 6 or 7 years before I took charge of the hog department. We have a man who goes to the chute pens and drives the hogs over to the commissionmen's pens. If a representative of the commission house is not there to receive the hogs the stockyard employees will remove them from the unloading chute to the most convenient yard and lock them up. Then we send our yardman there to get them. There are men who make it a practice of taking charge of night arrivals for various firms for so much per car and we have arranged with one of those parties to take charge of our hogs that might arrive in the night. These people charge 50 cents per car. My firm receives very few shipments by rail and such consignments as we have are in by 10 o'clock. The [fol. 402] greater per cent of the hogs coming to the market are in by 10 o'clock.

My firm drives its truck-in hogs from the north yards through an underpass under the Missouri Pacific and Union Pacific tracks and into what is known as the main yard. Truck hogs come in about 50 per cent at night and 50 per cent in the day. Most of those that come in the day come in the early part of the forenoon.

I arrive at the yards about 6:30. I have one hog yardman who assists me. He gets there about 4:30 or 5:00 o'clock in the morning. He moves the hogs that have come in during the night to our division from the receiving gate. When I arrive at the yards, he and I sort and grade the hogs and then we feed them. The first thing I do when I go to the yards is to inform myself as best I can as to receipts at other markets. I take into consideration the provision markets and try to form some conclusion as to that day's market. Being on the market each day I understand the trend and demands from the various buyers. We try to shape our hogs to be attractive to that demand. Frequently we will have a consignment that does not require

any sorting but most usually it does. Often in one truck load of hogs we will have as many as three grades. Each carload of hogs arriving by rail is put in a pen to itself. I have received consignments of hogs by truck amounting to one hundred head. On the 10th day of this month we received at the Kansas City stockyards 7,200 and some few head of hogs by truck. There were 695 owners in that day's run and 545 trucks. That is ordinarily as it runs along. When we have one head by truck we yard it in- [fol. 403] dividually as near as it is physically possible to do. If conditions are crowded we have to put him with another odd hog or so. We mark him so that we can identify him. We have 14 pens assigned to our firm. We borrow from our neighbors. When we sort the hogs we turn them out in the alley and the yardman holds the gate and lets them through. We sort for uniformity and according to market demands. Besides the pigs there are three or four grades for which we sort. Each owner's hogs are handled as a unit and are placed in separate pens. We do not sort for breeds. The stockyard company puts the feed in the pens. The packers buy a greater per cent than the order buyers but not to any great exten. We handle some stock hogs. There are two firms operating in the yards that handle stock hogs. The buyers come into our alley, when the market opens at 8 o'clock when conditions are favorable to buying. When the market is slow we have to go out and solicit the buyers. The buying is usually done between 8 and 12 o'clock.

Each of the four large packers has on an average two buyers in each division buying different classes of hogs.

It is unethical for more than one buyer for the same grade of hogs to be in a pen at one time. An identical market never prevails throughout the yards on any market day or at any one time. The market may be very active in a couple of alleys south of me but that man would fill his orders in there and pretty soon the market would ease down. A salesman has to watch these conditions and have [fol. 404] some idea as to what those orders are that are coming in. A salesman may come out and try to get the buyers to come to his alley. We usually try to have all the corn before the hogs that is necessary. After the hogs are sold they are driven to the scales. Sometimes my yardman drives them and sometimes I drive them myself.

Hogs are weighed practically the same way as cattle. We have had as high as 20 drafts from a car shipment and 5 from a truck shipment. Some shipments would be weighed in one draft.

The hog yardman will make out bills and run errands and whatever may come up to be done. The extra help on hogs listed in the audit of my firm is the expense of 50¢ a car for hogs yarded during the night.

Cross-examination:

Before I came to the stockyards my only experience with the livestock industry was the feeding of livestock in the country. I had lived on a farm. During that time I was frequently on the market. It was my experience that I could not handle the selling of hogs to the satisfaction either of myself or my employer when I started in. In so far as weight and quality were concerned I considered myself a good judge of hogs at that time.

My pens are about a quarter of a mile from the drive-in unloading chutes. They are in the north portion of the [fol. 405] hog house. Our yardman does not always drive each owner's hogs separately from the drive in unloading chutes. He has instructions to mark small bunches with shears and put three or four bunches together. It would entail too much work to drive each bunch separately. Our yardman has been working for me 12 years. An inexperienced can could not drive hogs from the drive-in chutes to our pens. I do the sorting as to grades.

The price spread of hogs that reach the market and the top grades on the market under present market conditions is $2 a hundred. The range of value would be normal in the bulk of sales. When I first began selling hogs it was a rare case that we removed anything from a car of hogs. They were yarded, fed, watered, sold and weighed as they arrived. At that time packers sorted their hogs after they were bought or sorted them on the rail at the packing house after they were butchered. They do not buy their hogs mixed any more. We have to grade them but not quite so closely as for the shipper trade. When the demand is very active we can get a better average price for the owner by not grading quite so closely and compelling the buyer to take some of the poorer grades in order to get the better ones.

The change in the practice of buying by the packers has increased the work and responsibility of the salesmen. Hogs coming to this market originated in Missouri, Kansas, southern Nebraska and a few from Arkansas and northern Oklahoma. In the early spring we get some Texas hogs. There is some differential in price resulting from the [fol. 406] origin of hogs.

Respondent's Exhibit No. 13

This is a classification of the different grades and qualities of hogs out of which variations in market value arise. It is not in keeping with the classification the Department of Agriculture uses altogether.

A stocker and feeder hog ranges from 50 to 160 pounds. Then there are classes by weight such as choice, medium and poor.

Whereupon Respondent's Exhibit No. 13 was received in evidence.

It ordinarily takes two men to do the sorting. If a salesman does not have a yardman, he must exchange work with someone else. We do help one another.

After I have sorted the hogs I will take the buyers into my alley, one by one, and show them what I have to offer. I proceed in this way until I feel that I have exhausted my efforts and that I have obtained the best possible price. I dispose of them unless I have reason to believe that the packers are going to be good buyers, and then I will hold them for a later market. The order buyers usually precede the packer buyers on the market. It is my personal opinion that packers buy after the order buyers in order that they may depress the price and that way reflect the price on their purchases in the country. The market price fluctuates from day to day and during any one day. I have observed a fluctuation in one day of one dollar a hundred.

[fol. 407] Appraisal Trips

I do not go into the country on appraisal trips. Mr. Swain is occasionally called to the country on appraisal trips for cattle. I devote my entire time to the market, correspondence, and personal contact in the yard. Mr. Swain uses his automobile very often on these appraisal trips, and he does not charge the expense to the office.

Change in Character and Volume of Business

We never did a large business. A number of years ago we handled a great many more hogs than we do at this time. They were coming in carlots from a greater distance than now. Our hog trade territory largely come- within a radius of 150 miles of Kansas City and now what proportion of it we have been able to hold arrives by truck.

The Livestock Exchange

I was a director of the Exchange for about sixteen years. It has been our sole aim to put into effect any new rule and regulation that in the judgment of the board would be practical and of benefit to shippers. The Exchange adopted a rule prohibiting string selling.

The salaries shown on our audit by the Government is simply a division of the earnings of the year. It does not represent in any way what we agreed upon between ourselves as an adequate or reasonable compensation for our services. I devoted my entire time to this business during [fol. 408] the year 1929 and have for the last thirty-four years. I have lived economically and I have not accumulated any sort of fortune in the business. I have had revenue from other sources.

Direct Buying

Direct buying of hogs in the country by local packers has affected the volume of our business. It has not affected our particular business very materially due to the fact that hogs in the zone around Kansas City come to us by truck. The country buying operations of packers are carried on at points further removed. Armour and Company is receiving hogs by truck at the Mistletoe Stockyards.

Contact with Customers

I write my own letters. I do not employ any stenographer. Sometimes we pay interest, but we do not require so much working capital on account of the fact that we remit by check for truck-in hogs. We do not do any loan business. I do not think that the volume of receipts or of business indicates or determines the efficiency of operation. Sometimes advertising and wide-spread contacts with the

trade will bring business irrespective of the relative degree of efficiency. Personal care and attention to the shipment of livestock is a very vital factor in obtaining the highest possible dollar. In 36 years I do not recall an incident where shippers have complained about the amount of commission charged. I have noticed salesmen for smaller firms having greater difficulty in disposing of their livestock than a salesman for a larger firm, but I attribute that to the [fol. 409] personality of the men. Where personality is the same, volume does not cut any figure.

Redirect examination:

We receive our hogs Mondays, Tuesdays, Wednesdays, and Thursdays, as a rule. From the middle of October to the middle of January hogs receipts are heavier than at other times. Occasionally there will be liberal receipts in May and June.

Twelve or 15 years ago when I was in the firm of Lennon, Elliott & Company, we handled more hogs than we are handling now. I sold all the hogs then. We probably handled twenty-five per cent more than we do now. Our business has not been affected as much as some others, because we keep our business close to Kansas City. Our business comes largely from within a radius of one hundred miles. I have been asked a number of times if I would be interested in taking an interest in another firm, whereby my earning capacity would be greater. I was never offered a salary. I prefer to remain as I am rather than go into another firm.

Mr. Swain sells all of the better cattle and some of the others at times. His assistant sells truck-in cattle and butcher stuff. Our cattle salesmen do not have a sufficient quantity of cattle but what they can keep fully posted on one, two, or three different grades that they may have to sell. If the volume were greater it would necessitate a division among salesmen. My patrons think that I can sell hogs just as efficiently as if we had a salesman for the various grades of hogs. I think I am handling all that I can handle and get the proper results. I can dispose of an unlimited amount of hogs, but when I go to selling them [fol. 410] and obtaining the very best possible results for my patrons, I have my limitations. I know that there are salesmen in the yards who sell more hogs than I sell. I take it that they are good salesmen.

Our little business comes very uniform. I do not remember any especially heavy day the past year. I think the boys had 125 trucked hogs yesterday. Monday, as I recall, it was something like that. Sometimes it goes above 200 a day. About a month ago I had 286 hogs.

Recross-examination:

In my judgment volume can have the tendency to decrease the efficiency of salesmanship, due to his natural limitations. There is no expense in obtaining the business of traders or maintaining contact with them. I believe that traders would be willing to pay the higher commission if they were given the preferred attention that we give regular shippers.

Redirect examination:

There are extremes in each direction which would affect a man's efficiency. There is a slight variance among salesmen. I never show "seconds" in connection with my fresh hogs. My firm does not spend much money for advertising, and it does not do much soliciting. Our business comes to us because we are able to satisfy our patrons. There are many firms that get as many truck hogs as my firm and there are some that get many more.

[fol. 411] Recross-examination:

The reason I do not go to the country is because of my established acquaintance, as well as my selling efficiency. That acquaintance has built up during a period of 34 years. I contact those men every 90 days with a personal letter. I get in touch with them over the telephone and give them advice in regard to their hogs. Our business would diminish if we did not have this established acquaintance. The dimunition in the number of hogs handled does not affect the competency of a salesman. The more time and effort he has to attend to them the better results he will get.

Whereupon the witness was excused.

[fol. 412] JAMES R. HENDERSON, a witness called by the Government, after being duly sworn, testified as follows:

Direct examination:

I am the office manager for the Moffett Livestock Commission Company, 546 Livestock Exchange Building, Kansas City, Missouri. I have been in that office about 17 years. Prior to that I was cashier of a bank. My firm is a partnership, consisting of two partners. We have an exclusive steer salesman, exclusive butcher salesman, and exclusive hog salesman, and the partners both buy and sell anything that comes to their hands except hogs. We have two regular yardmen and two people in the office. One of our men works part time in the yards and part time in the office. We have an extra yard man beginning about the first of August until the first of the year. We generally use him several days each week. This particular man works for us exclusively. Our regular yard men usually work in the cattle alley, but occasionally will help out in the hog yards. Our salesman generally handles the hog business himself. If our boys are busy in the cattle yards, he will trade off with some other firm. We do not have a large hog business. Our business is gradually running to the truck business more than carlot business.

I have complete charge of the office in ordering all supplies, attending to all banking and remittances, writing market letters, and keeping the books. The other two em-[fol. 413] ployees in the office assist me in anything that comes up and when I am not there they take my place. We have frequent personal visits from shippers. It applies to the carlots more than the trucked-ins. We handle all classes of cattle. These cattle begin to arrive at the market any time after midnight up to eight o'clock in the morning. If they arrive before six o'clock in the morning our night man will receive them and yard them in pens, for which he receives 50 cents per load. Our salesmen will have to be on the job generally around six o'clock in the morning. When the tickets come to the office we try to have two people figure against each other. One takes the duplicate and one the original, and figures the ticket. A bill is then made with a clearance, which is a title order. When we sign that order we are behind those cattle and guarantee the ownership of them.

I can illustrate from an account sale which I have here the work done on a plural ownership consignment. This consignment contained 18 cattle and 53 hogs, and there were 21 different owners in this car. The same procedure was followed in yarding, feeding, selling, and weighing this shipment as I have previously described, but necessarily it took more labor. The tickets were all figured in the office as described before. The account sale was made up on a form covering two sheets, showing the owner's name, following the entry of each species of stock sold. The net proceeds were determined, and then the amount due each [fol. 414] of the 21 owners was prorated. This is quite a lengthy and an exact operation. A master proration sheet was filled out with the name of each owner, the gross amount of the sales, the prorated expenses, and the net proceeds. After that sheet is filled out, we have an account of sale which we call a prorated account of sale. We make one for each owner, showing to whom the stock was sold, the number of head, kind, weight, dockage, if any, price, total amount, prorated expenses, net proceeds, and where the proceeds were to be placed. In this particular case it involved the making of 22 separate account- of sales. There is also a special freight rate which applies to mixed species of livestock. These complicated rates sometimes cause us to make errors. After we enter the weight on a bill, the railroad generally allows a fill allowance of 500 pounds for a certain distance, and 800 pounds for a longer distance. We take that off of the weight, and figure on the net. We return that bill to the Western Weighing Association, and they check the rate and return the bill to the stockyards company, which makes up a bill including all of our freight for the day before. They send us that bill, and we check it back with our account of sale.

The truck men take out a policy with the Hartford Fire Insurance Company, guaranteeing them against loss of any kind, and they leave one of those slips with us. We collect from the shipper and remit the premium to the insurance [fol. 415] company. That policy insures the farmer against loss while the livestock are in the truck. The truck charges were 60 cents a hundred on this particular consignment from Osceola, Missouri. The average truck rate runs around 40 cents a hundred, and after they pass a hundred miles it goes up to 60 cents.

Nearly every consignment of trucked stock calls for a separate check. They do not deposit much in the banks, and they ask us to mail them a separate check. I have here an account sale for a shipment of 34 cattle in one carload where there were plural owners, and we had to figure 18 different accounts. However, we did not make a separate account of sales for these different owners. We just marked the shipment according to the marks on the livestock. In case of that kind, if the shipper is not there himself, he will send us a letter giving us the markings on these cattle. Our salesmen and yardmen have got to take that sheet and sort out the cattle. It also requires a great deal more time and more care and checking in the office. Oftentimes we do not dare to start an account of sale until the yard man and the salesman can get in there and check the tickets and see that they are marked right. Compared with a simple account sale the work is five fold as great.

The salesman then comes to the office and gives us information in regard to the ownership of the livestock. As between the two plural ownership consignments to which I referred, it probably took an hour longer to make out the [fol. 416] account sales in the case where we prorated. We use a Burroughs calculator in figuring tickets, but we do not use it in prorating.

People come in to be entertained and ask about the markets, and my time is taken up a good deal in that way. I handle most of the details in the office. I prepare all the market letters. During the past season we sent about eleven hundred letters a week, and there have been times when we have sent out as high as three thousand of them in a week. We have a record of every shipper that ever comes to the office, and we keep track of those that seem to be active in the business. If a shipper does not make a shipment within a year or two we generally drop him off the list. We keep in touch with shippers also by personal correspondence.

We do not do newspaper advertising to any great extent. About three or four times a year we generally have an ad running in some of the papers. We use novelities, such as books and pencils with our name on them, and give them to the shipper.

Mr. Moffett, a partner in the firm, is a very large land owner, and has a number of ranches. He does quite a

heavy cattle business of his own. He has a large wheat ranch. He spends considerable time on these ranches when it is slack in the commission business.

The other partner, Mr. Baker, spends most of his time here in the commission business. He has some investments that he looks after outside of the firm.

[fol. 417] We do not receive enough sheep to pay for a separate salesman. We turn our sheep over to a regular sheep salesman on the market.

I would not say that either one of the partners sells many cattle during the course of a year. They employ specialists to do that work, and they see that it is done right and help, if necessary. They buy the cattle which are purchased.

In addition to the owners there are three non-owners listed as selling and buying cattle. No. 3 is our butcher salesman, No. 4 our steer salesman, No. 5 is a combination buyer and office man, No. 6 is our hog salesman. No. 7 is our head yardman, No. 8 is our extra yardman, No. 9 is the office manager, and No. 10 is extra clerical work in the office. No. 7 does anything that is to be done by a yardman when he is not busy meeting trains, yarding, watering, feeding and looking after cattle in a general way. Our general yard help sometimes helps down in the hog division when he is not busy with the cattle. According to the audit our firm spent $110.33 for extra help in the hog division. No. 5 used to sell our calves but he devotes his time now to see that the cattle are fed, watered and weighed and then he has a few customers that he buys for.

In addition to Mr. Moffett, Mr. Baker, Mr. Stockton and Mr. Metz do appraisal work in the country. They apportion the work according to the location of the trip. It depends upon whose customers are to be visited. They do not aim to [fol. 418] go around to see all their customers in the course of a year. We might hear of a neighborhood where there are quite a few cattle on feed that would be going to market soon and they would go out to investigate and see what was in the country. If one of our customers living there wants us to appraise his stuff we will go into the neighborhood. Those firms that keep regular solicitors out all the time will go where they think they can get the business. Our firm does not do a great deal of soliciting. When they go out to appraise cattle for a customer he might tell them about a

neighbor who has got some and he will go and look at his cattle and solicit his business.

We generally try to have someone attend the larger meetings.

I said it was as difficult to handle one calf as it was a carload but it is just as easy to bring a carload as it is to drive one calf. It is just as easy to sell 20 steers as it is to sell one calf and sometimes it is easier. If you have a carload of fat cattle and a packer comes in and wants them you can sell them in two minutes. You may haggle with this one calf for half an hour or half a day. The ticket for 20 steers is no larger than the ticket for one calf. It is really more work than it is for a carload of cattle. We pay just as much attention to one calf as we do to a carload.

Whereupon the witness was temporarily excused.

[fol. 419] JOHN W. MURPHY, a witness called by the Government, after being duly sworn, testified as follows:

Direct examination:

I am a livestock salesman for the Bowles Livestock Commission Company which is a corporation doing business at the Kansas City market. It is a branch of the Chicago office. There are 10 or 15 stockholders of which I am one. My firm handles all three species of livestock. We have the sheep sold by a firm who makes a business of selling sheep. I sell most of the fat steers. I also sell stocker and feeder cattle. We have two salesmen selling steers in the spring and summer months of the year. I generally handle fat cattle. In the fall of the year my end of it is principally on the stockers and feeders. Mr. Hopkins also sells fat cattle but a good deal of his time in the fall of the year is devoted to the buying of stockers and feeders. Our butcher salesman sells fat steers in the yearling line. That is the class of trade that will go to the butcher buyers or buyers for packing companies. They may be steers of a kind that fall under 700 or 800 pounds. Mr. Martin confines himself practically altogether to the butcher cattle. Mr. Crumb handles calves but we also use him a great deal as a weigh master and a yardman. A man who starts out to be a salesman usually begins with calves. Our butcher

salesman also handles the heifers and stock cows in the cow department. Mr. T. L. Bowles is manager of the office and does no active selling. He looks after quite a good deal of pasture. He does office work and in the fall of the year he [fol. 420] does some soliciting. I look after quite a lot of this pasture business. We handle quite a fair volume of that business in the spring and fall. I go to the country now and then but my solicitation is confined mostly to requests to come to the country. I don't make much of a habit of going to the country just harum-scarum. Mr. Bowles and I were both kept exceptionally busy this past spring on pasture work. I venture to say that for five of six weeks during the early movement I was out practically half the week.

When I am through in the yards I go directly to the office. In the fall of the year I have been at the office from 5:00 in the morning until 10:00 at night. In the summer I imagine I am there from 6:00 or 6:30 to 3:00 or 4:00 in the afternoon, with the exception of Saturdays. During the fall of the year I put in from one to two hours in the office each day but it will not amount to that much at other seasons.

Mr. Crum looks after a good deal of the "jack-pot" weighing and sells the calves. Mr. Martin sells some of the calves and mostly the butcher class of cattle. He also works in the office looking after account sales and correspondence. Mr. Sloan is our only hog salesman. We have an assistant over there with him who works in the office in the afternoons. He is not a salesman but he assists in the yard work in the forenoons. I imagine Mr. Sloan puts in more time in the office than I do because he helps a good deal on the books. He does a little soliciting now and then [fol. 421] but it is mostly on request.

Mr. Conn is the bookkeeper and cashier. He devotes himself exclusively to the office work. Then we have a stenographer who devotes all of her time to office work. In 1929 we had a yardman who spent most of his time in the cattle division. Mr. Bowles' son was there for six or eight weeks during the summer. Mr. Brandom is senior yardman and he spends most of his time in the cattle division. We do the office work on sheep received by our firm. Our best run of fat cattle is in the spring months and then again in the fall months. The heavy run of

stockers and feeders begins about the first of August and runs until the holidays.

I know of one instance where we had 15 cars of cattle and 22 head was the largest amount belonging to any one man. Those cattle had to be classed and weighed as they were sold and weighed according to the different brands belonging to the individual owners. It is probably easier to handle one car of cattle all of one kind whether they are stockers and feeders or fat cattle than it is a shipment such as I have mentioned. The selling might require just as much time. It depends upon the demand and the quality in flesh. As far as the office end of the work is concerned there would not be much difference. Most of the stockers and feeders come from Texas, New Mexico, Colorado and western Kansas. Over a year's time I would say probably more of them would be of single ownership consignments. We get some consignments of more than one car. The largest consignment during the past year I [fol. 422] would say was composed of 15 cars. That is an exception nowadays. In the fall of the year for three months we will have quite a few 3, 4, and 5 car shipments.

Pasture Contracts

One day we got a wire from a party asking me to meet him at a point in Kansas. He also wanted to make a loan of $150,000 on 2500 head of steers. We got in touch with the people that could handle this loan and wired him we could make the loan arrangement and that I would meet him in Kansas. He came up there in his car and I met him. We drove for three days looking at different pastures. About 10 days or two weeks later I met him at Wichita and we drove another three or four days and then made arrangements for pasturing the cattle. We were in hopes that we would get those cattle to sell when they came back this fall. That is what pasture arrangements are generally made for. We do not charge them anything for that kind of service except that we naturally expect those cattle back on the Kansas City market. I spent a week or ten days working with this party and Mr. Bowles spent a week. Eventually wet get a little less than one-third of those cattle. We have had probably eight or ten such deals as that. No charge is made for that work. The man who is seeking the pasture does not reimburse us for our expenses.

Salaries of Owners

At the annual meeting salaries are specified for the fol-
[fol. 423] lowing year. We have no open drawing accounts. The directors determine what the salaries shall be for the various active stockholders as well as for the employees. I suppose the salary is based upon a man's ability and his earning capacity. Either Mr. Bowles or I attend three principal meetings during the year. The general purpose is to get in touch with the business conditions. It gives us a line on the class of cattle that will probably be handled during the fall. We have a weekly market letter that we issue and at seasons of the year we get out a letter to 15 or 25 or maybe 100 different people for a particular line of cattle that will be marketed in a specified time. We confine our market letter largely to active people we have done business with or on request. We have a pencil and a memorandum book that we give out as a novelty.

Handling "Seconds"

We handle very few seconds. A stocker dealer might buy several cars of cattle in which there are some fleshy steers. The dealer will class those cattle and the thin steer will sell to a better advantage than the fleshy steers. Sometimes he will take the fleshy end down to a commission man and try to resell them. It is an exception when traders turn stocker and feeder cattle over to a commission man to be sold. If a dealer or trader has any cattle he wants you to sell he will deliver them to your alley and if you can't sell them he will take them away. He does not ask you or require you to do any other line of work other than
[fol. 424] selling cattle. They will generally bring them down sorted. Naturally we will resort them if we think they will go better. Generally the commission man handles the feeding. After they are sold we attend to the weighing the same way as we do the fresh stuff.

A good many concerns have salesmen that specialize on the particular type of animal he is handling. He has an idea of value of all classes and kinds but the man who makes a specialty of stockers and feeders is better posted on the particular class of cattle that he handles than the fat cattle salesman.

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Cross-examination:

I have been connected with the livestock industry 28 years. For five years I was with the packers, and since then in the commission business. I started out with the packers as a messenger boy, and when I left the packers I was buying calves and odds and ends on the Omaha market. I entered the commission business at Denver. I began selling cattle. I was in Denver three years and in Sioux City four years. Then I went to El Paso, Texas, to handle range cattle for a commission concern. I was in Texas eight years. Twenty years ago a packer buyer would not think any more of buying 20 cars than some of the packing house buyers think of buying two right now. They are specializing on these cattle. To illustrate the point, a buyer bought 13 head out of one drove of cattle several weeks ago, and he weighed them up to a special [fol. 425] account. He sorted those 13 head, and when he got through there was not a variation of a hundred pounds in the two different classes of cattle. The packers have a man to buy this and a man to buy that, and it requires a lot of time on the part of a salesman to try to get his cattle sold to the best possible advantage. He deals with ten specialty buyers now, where he used to deal with two real buyers. Up to a few years ago, the sorting was done after the purchase when the beef was on the hooks. Now it is done in the yards by the salesmen, and sometimes by both salesmen and buyers. This increases the work and responsibility of the salesmen.

Right now the spread between the lowest and highest values on cattle is $12 a hundred. When I first went into the stockyards the spread was not nearly so great as it is now. As that spread has increased, the responsibility of the packer buyer and the salesman has tremendously increased. Business experience has probably been the salesman's best teacher. If he is smart he knows cattle, and especially the kind he is handling. Capable salesmen must be students of conditions, the general market, the outbound movement of stockers and feeders, and what is going on generally in the livestock line. He must possess some initiative and independent judgment. It is very rare that cattle come to us with the price tags already put on them. A salesman must be able to judge the market value of live-

stock from the standpoint of its quality and grade on the market. It is common for the different buyers to vary 50 [fol. 426] cents to a dollar a hundred in their bids on the same lot of cattle. The cattle which come off of the pastures where we have arranged pasture contracts arrive mostly in straight carload, single ownership shipments. Generally, there are several cars in each consignment. It is essential to have salesmen of the highest competency in charge of the fat steer division. As you maintain fat steer price levels, the tendency is to maintain the general price levels all through the various butcher classes.

Our salaries are fixed in line with the expected amount of revenue which our concern will derive from the business. There is approximately a 15% cut in the salaries or drawing accounts between 1928 and 1929. No compensation is paid to the members of the Bowles Livestock Commission Company at Chicago:

There has been quite a series of bank failures going on the last few years. Our risk is two fold what it was a few years ago. A business of this kind, where a great volume of actual money and property of value passes through the business each year requires some supervision.

The Omaha stockyards covers an area that is square and the outer dimensions are practically equal in length. At Kansas City the construction is strung out in a sort of long rectangle. That has considerable effect on the cost of yard operations. The handling of the livestock at Omaha was done a little easier, I believe, than it was here. It entails a lot more work to get cattle off of the far dock [fol. 427] to any particular division in the yards than on any other market I have been on. On top of that, a commission man here has got to get his own cattle and hogs, and bring them to his own division. The yards at Sioux City and Denver are comparable to the yards at Omaha as to layout. We have our own men bring up the drive-ins to us here at Kansas City from the drive-in gate. That applies to both hogs and cattle.

Recently the stockyards company adopted a rule, whereby it yards in one pen livestock consigned to different commission firms if they arrive in one truckload, and then it puts the responsibility on the representatives of the various commission firms of sorting that livestock according to the identification given by the truck driver. In Omaha

I am sure that the hog docks join the general hog selling department. I am not positive about the drive in cattle dock. I know several packer buyers who have admitted that it is harder to buy on the Kansas City Market. That is due largely to the wide variations from the standpoint of origin, methods of feeding and finishing.

Whereupon the witness was temporarily excused.

[fol. 428] JAMES R. HENDERSON, a witness, called by the Government, who had previously testified, returned to the stand and testified as follows:

Cross-examination:

My firm is a successor of the former firm known as Moffett Brothers and Andrews. Prior to the time John Moffett and Tom Moffett went into the commission business they went into the cattle business in the Southwest, and their operations were very successful from a financial standpoint. In the early days of their commission business they did a substantial loan business. I would say that the loan business assisted in building up a volume of commission business for the firm. As depressions came in the livestock industry that had to foreclose some loans and take over cattle and lands. Some of these lands became very valuable. My firm is at present doing no loan business. Tom Moffett now owns cattle and sells them through his own commission company. He had cattle here this week. He exercises supervision in a general way over the operation of the business. He has spent a lifetime in the business, and his whole heart and soul are in looking after the interests of his customers. He usually arrives at the office not later than six o'clock in the morning and rarely leaves before six at night. He is out in the yards every day conferring with salesmen and looking after the feeding and proper filling of the cattle. These commission men are real experts, and their knowledge is certainly worth something to the shipper. They are put up against the [fol. 429] expert buyer that the packing companies employ. I personally have an interest in a farm and a herd

of cattle located in the Flint Hills country. I would not consider that I was competent to compete with the things that we have to contend with on the open market. It is my judgment that competent and efficient salesmanship is an invaluable asset to the owner and producer of cattle. Mr. Baker has had more than 30 years' experience on this market, and has been a salesman for most of that time. At the present time he devotes his entire time to the purchasing of cattle on orders. His ability as a salesman is just as good as any other salesman that we employ. He is very diligent in his efforts to look after the interests of his patrons. In the transaction of our business, I would say that it is absolutely as necessary to be accurate and as competent as the average bank employee.

Redirect examination:

Our firm does not maintain an automobile. Our trips are all made by train. Automobiles are used at the terminals where they wish to inspect cattle. I would say that there are men at the yards who are better judges of livestock than others. Some of the salesmen down there are comparatively young men, and perhaps never had the experience in handling livestock that the older men have. Mr. Moffett and Mr. Baker have been in continuous service for more than 35 years. Charlie Stockton, our steer salesman, has been there more than 25 years, and has been connected [fol. 430] with important firms all those years. Barney Metz, our butcher salesman, has been there about 12 years. Our hog salesman, Mr. Holmberg, has been there probably 20 years. In their supervision of the business, Mr. Moffett and Mr. Baker do not attempt to limit the salesman in any way on his judgment. They just confer together and offer any advice as they see fit. Oftentimes a salesman will ask them what they think of a drove of cattle. In the final analysis it is left up to the sa*el*sman.

Our traveling expenses have generally been limited to a very modest amount, so that it has never been necessary to make a budget. All the expenses from the time they leave the office until they return go into the traveling account. That account includes transportation, railroad fare, and meals. It is my opinion that efficiency in the operation of livestock commission firms would be helpful to the shipper, and would naturally operate to the benefit of

the firm itself. If salesmen and employees were all efficient, it would operate to the firm's benefit, but the greatest benefit would be to the shipper.

Our losses from inaccuracy are quite infrequent, but we have small losses creep in from the fact that we overlook putting in a bedding charge or a feed charge on the freight bill. Sometimes we collect from the shipper, but occasionally a shipper will ignore such a request and we take the loss rather than turn away a customer. Most of them will send it to you if you will write for it. Occasionally a shipper will draw a small amount of cash, and [fol. 431] in our rush and hurry to get out his account of sale we may overlook charging it to him. In most cases those matters can be satisfactorily adjusted.

We solicit truck business but do not make any special effort along that line. Some firms solicit the truckers' business through the local papers. Our firm does not do that.

Recross examination:

About 15% of our float is on sales and about 85% is on purchases. Our sales float would average about two and a half days and our purchases would average about three and a half days. Mr. Baker and Mr. Moffett receive no set salaries but they divide what is left between themselves.

Redirect examination:

In the employment of a salesman there are required ability, experience, honesty, standing with the industry, acquaintance and ability to control business. The fact that he owns a membership and can go into the country to solicit business is a factor.

Whereupon the witness was excused.

[fol. 432] JOHN W. MURPHY, witness for the Government.

Redirect examination:

I don't believe there was much change in the buying or selling tactics until possibly right at the time of the start of the war or shortly after. They started then making

quite a distinction in the classes of cattle. Up to that time packer buyers bought a whole consignment of cattle, good and bad, at one flat price. I mean by that that they would buy them in any single car or up to as high as 18 or 20 car consignments practically all of one kind of cattle. The weights might vary considerably. They would buy a train of cattle that would vary in weight from 800 pound steers to as high as 1200 and 1300 pounds. You do not often see a packer buy any cattle nowadays ranging in weight from 800 to 1300 pounds. They are generally sorted. I believe the order buyers for the eastern packers make even a finer distinction. I am not as well acquainted with the handling of hogs but of course the spread in weight cannot be as much. These light hogs have gone to the front for the first time in a long time. Each order buyer demands a certain weight of hogs within a very narrow range.

I have seen a variation of $1.00 a hundred on the same class of cattle on the same day. Those things happen because of variations in the knowledge and ability of the buyer and the seller. We get cattle from the pasture area even when we have not helped the owner of those cattle to [fol. 433] rent the pasture. A great many of those Texas and Oklahoma men rent their own pastures. After we have helped some of them they deal direct with the owners of the pastures. In some cases we continue to get their cattle.

Each of the big packers have two fat steer buyers on the Kansas City market. They have men that buy the yearling class of steers and the butcher class. They have 3 or 4 butcher buyers each and at least 2 calf buyers each. I venture to say that if we would get 20 cars of western cattle a day, such as we were getting 20 years ago, it would probably require four or five times the amount of time in classing these cattle than it used to when I started. We would probably have to find a half dozen buyers for that particular train of cattle. In 1923 there were times when we could sell a packer five or six cars of cattle of one kind, particularly of grass cattle. It is the exception when you sell them that way now. These buyers have the most difficult orders to fill and they will give correspondingly more to the highest grading, killing classes of cattle.

Some of the eastern packers are steady buyers on the Kansas City market. I started in at Omaha in 1902 and went to Denver in 1907. I was back at Omaha four or five

times between 1910 and 1914. I was in a concern for 12 years and I would relieve a salesman or buyer at five or six of the markets they operated on during the vacations or something of that kind. That was with Clay Robinson [fol. 434] Commission Company. I have not been actively on the Omaha market since 1914. I meant that the Omaha yards were comparatively more of a square than the Kansas City yards. I do not think that the commission cattle division at the Omaha stockyards is more irregular in shape than the commission division in the Kansas City stockyards.

Kansas City gets a larger variety of livestock, particularly cattle, than any other known market in America, and that is the reason why it is a more diffcult market on which to buy cattle. I don't know personally of any other market that draws from the same range that the Kansas City market does.

Q. Mr. Murphy, about how many cars of cattle do you handle in a year?

Mr. Gage: Now, Mr. Examiner, that is objected to, if it is to be a matter of rambling information from the witness, they have the audit here that not only has the number of cars, but the number of head for the year 1929, and, of course, we can have an accurate record gotten up on how many cars this firm handles from the books and records.

It seems to me like that sort of a question is drawing out here matters of inaccuracy, when matters of accuracy can be developed, and absorbing time in the process.

Mr. Bohanan: Mr. Examiner, I think if my question was understood, I was not asking how many cars of cattle the Bowles Livestock Commisison Company handle in a year, [fol. 435] but how many cars of cattle Mr. Murphy handles as a salesman in a year, if he knows.

The Witness: Well, off hand, I don't know, and that would depend on the conditions. A hundred and one things could develop in that.

Q. Would you say that you ever handled as many as 1500 cars in one year?

A. Yes.

Q. Was that recently?

Mr. Gage: Well, now, Mr. Examiner, I object to the question the way it is put, how many he has handled. You mean

how many has he, as a salesman, in an organization, in conjunction with all the other factors that enter into it sold in a year?

The Examiner: I take it, you refer to how many he has sold, Mr. Bohannan?

Mr. Bohannan: I think that was my question, handled as a salesman.

The Examiner: All right.

The Witness: Well, off hand, I could not tell you how many I have sold.

Q. I take it you don't know how many you sold in 1929?

A. No, I don't, Mr. Bohannan.

Q. You don't know whether it was 1500 or 1000 or what?

A. Well, off hand, I couldn't say just what it was, be- [fol. 436] cause I haven't any recollection of what our year's business was, that particular year.

Q. And you couldn't say how many you have sold thus far, in 1930, I take it?

A. I couldn't give you an accurate estimate of it.

Q. Now, taking your business as it is, how many cars do you think a good salesman could sell in a year, if he had them to sell.

Mr. Gage: Now, just a minute. I object to that question. It is just as ridiculous and foolish to be asking questions like that in this hearing, as it would be to ask in a rate hearing, involving the rates of the Union Pacific Railroad Company for freight, how many tons of traffic they could handle in a year. It has nothing on earth to do with it, and wholly immaterial to any issue here. You can ask how many they have sold.

The Examiner: Objection overruled.

The Witness: Do I understand I am to answer that.

The Examiner: If you know; yes, sir.

A. I don't think there is a human being on earth could tell.

Q. Do you think he could handle as many as 1500 cars and handle them properly?

Mr. Gage: Objected to.

A. Yes.

Mr. Gage: What?

[fol. 437] The Examiner: Read the question.

(Last question read.)

Mr. Gage: That is objected to for the reason given in the objection to the former question, and for the further reason that it fails to state the conditions under which they are to be handled.

Mr. Bohannan: Conditions just as they have been in the past year at Kansas City.

The Examiner: All right; objection overruled. Is the answer "yes," as stated above or not?

A. Yes, but that would depend altogether on market conditions climatic conditions, and the various things that enter into livestock selling.

Recross-examination:

I did not sell all the cattle that were consigned to my firm last year. On some of those that I did sell, various salesmen assisted me with their counsel and advice. We worked together. I think I worked reasonably hard during the year. I venture to say that I put in eight to nine hours every day, and that was true with reference to other salesmen. There were times during the year when my work was so crowded that I could not give all the attention to the cattle that I would have liked to have given them. I know of instances where producers and owners of cattle in the country have split up their consignments among several different firms in order not to overcrowd the salesmen [fol. 438] of any particular firm. I could go down to the yards, and if I were just interested in disposing of these cattle at any price I could sell a very large number. There is a difference between simply getting rid of cattle and really selling them. I was at Denver when there was no exchange organization there, and we had instances where buyers would back out of a bid, and I have seen instances where a seller would back out of a bid. Those conditions do not exist under the present organization of the market at Kansas City. We sell cattle to the countryman. In fact, we sell them to anybody that will give us the most money for them. We are after net results for the shipper, and it is immaterial to us who buys the cattle, and when we buy we go where we can get the best results.

This stockyard gets pretty sloppy in wet weather.

Whereupon the witness was excused.

[fol. 439] A. J. MAURER, a witness, called by the Government, after being sworn, testified as follows:

I am a livestock order buyer at the Kansas City stockyards. I do not conduct business on any other stockyards now, but have at St. Louis and St. Joseph in the past. I buy all species of livestock. The majority of my customers are eastern packers. I first started in Kansas City with my father in 1886. He was speculating. I have been an order buyer for nine years. I have standing orders, and also receive separate orders from eastern packers. The majority of them are separate orders and are one-load orders. I receive these orders by wire and telephone. The majority of them come in the day that we are expected to buy the livestock.

The stockyards company takes charge of the livestock at the scales after we have purchased it and it has been weighed. The company is supposed to do that. A lot of our shipments is weighed late, and we have to drive them to the trains. There is a specified time when we have to have the pen numbers in, and when they are not in by that time we have to deliver them ourselves. That keeps our yard men busy. Some days I buy 30 or 40 cars. Some days you can buy 30 or 40 cars with less effort than you can buy three on another day. On those peak days we have to have extra yard help. Quite frequently I buy six or eight loads of cattle in a string, and I will sort them up. There will be a heavy and a light end, and a medium end. [fol. 440] Sometimes I will buy a half a load of cattle and hold them over and fill them out the next day. I don't suppose I have sold three loads of cattle on the Kansas City market since I have been in business.

One man can buy all classes of cattle but he can't do as near a good a job as he could if he specialized on one kind for the reason that different salesmen sell different grades of cattle and if a man is buying everything he has so much ground to cover that he can't see near all of them. It is quite a handicap to have to buy two or three different classes of cattle in one day. If he handles only one kind he gets to see many more of that particular kind of cattle and gets a larger assortment to select from. It is not a question so much of judgment as it is of getting to see the cattle. He does not have the opportunity of getting the assortment. I feel that I have to keep posted

on all kinds because I have to know whether the buyers under me are buying them worth the money. I never had any hesitancy in buying any class of livestock. The principal reason you need assistance is because you don't get to see the cattle. If a salesman of a special kind knows that you are a good buyer of that kind he will try to see you before he sells his cattle.

We then make up an account purchase listing the number, price and weight of the livestock purchased and send that with the scale ticket to the purchaser. Then we either [fol. 441] draw a draft against the customer or wire him the amount, according to his request. That means that we are out of the use of the money 3, 4 or 5 days and with the Federal Reserve Bank it means that we are out of the use of the money from one to three days for which we get no credit at all. When we draw a draft it takes anywhere from three days to three weeks to get the money back. Two weeks is not unusual.

It is not usual for a big packer to be dilatory but it is for some of the small ones. I ship to packers that I know haven't much money. I just take a chance that I will get through. When I draw a draft and deposit to my account I get credit subject to payment, but I have to pay the bank the float for all the time it is out. They charge me interest on a float. They charge me 7 per cent interest. Those customers who are out a distance I charge exchange. I make a float charge aim to cover the interest. I charge $1.00 a thousand. That does not apply to drafts that we get back in three, four or five days. However, it only takes five days at 7 per cent to eat up that $1.00 a thousand. The exchange does not cover the interest which the bank charges. We do not charge exchange on customers who are near by. A good deal of it is governed by the bank that we draw on.

It is almost impossible for a man to come from another place and buy cattle on this market regardless of how good a judge he is. I feel any good order buyer can have an [fol. 442] outsider several times his commission charges in his trading. When I buy from traders I find the cattle are more closely sorted than when I buy from commission men. The traders even them up and make a more uniform type but the commission man likes to sell the string.

I find active competition when I go into the yard to buy livestock. Some days it is much more active than it is

on others. When the beef market is demoralized the packers are rather indifferent and the big packers are naturally a little more indifferent than the order buyers. When that condition exists I quite frequently get fair sized orders on the assumption that the receipts are going to be lighter on the market and by the time the cattle arrive at the packing plant they will be worth the money. Last week I bought 81 loads under this condition. I would say 90 per cent of the time that a higher market has a tendency to increase the receipts of livestock. When the supply becomes higher it has a tendency to depress the price. The condition of the market here is affected almost wholly by the meat market in the East. The packers and the feeder buyers have all the principal markets in the country available to them. Ordinarily different markets do not stay out of line very long.

As soon as you are through with a trade and walk out of the alley it is understood that either the seller or buyer can change his mind in regard to the offer or bid in those [fol. 443] cases where a deal has not been made. As long as we are trading in the alley it is an unwritten law that we will take the cattle at the price bid. It is the custom that if I am first on a bunch of cattle and bid and another man bids the same price, the salesman comes back and offers them to me. A good many of my orders have the price stated at which I am expected to buy.

My advertising consists of circular letters, telegraph and telephone. I send out circular letters once a week. We make periodical visits to our customers. I might have five or six customers here on the market at a time and will entertain them.

Each buyer has a horse and saddle and we have to rent a good many horses to the country trade. When the country buyers come in they want to ride. Sometimes a man will stay around and use a horse two or three days, go home and not buy anything. We rent these horses at $2.00 a day. The firm provides the horses used by our buyers. A good fast walking saddle horse is worth a lot of money to a buyer. I hardly ever have over three horses.

I was head buyer for Armour & Company at one time here at Kansas City, The packers ultimately make the price on slaughter livestock. They do not always make it on the basis that they want to. The big packers have to meet competition in the selling of their meat.

[fol. 444] Cross-examination:

It is the breadth and amount of the demand for livestock as expressed in bids of various buyers which make the market for livestock at Kansas City. I recall the days when the erection of packing houses was encouraged by donations of land. I believe that the stockyards company, the commission men and the producers should encourage the presence of order buyers and off market packers on the market. The more competition there is the better it is for the man who ships his livestock to market. Perhaps every day I bid on five to ten times as many cattle as I purchase. Those bids serve to stimulate the market. I think anything that advertises our market and brings additional buyers here is very beneficial to any one who ships to this market. It used to be that a head packer buyer had the privilege of buying almost an unlimited amount of cattle if the price looked right to him. Now they are limited as to their purchases and won't buy many more cattle than they have orders for without first wiring to the firm about it. It requires much more sorting to get the kind you want. There has been a very wide spread in the price of cattle. Last week the top was 14½ cents a pound and we were buying some canners from around 2½ cents a pound. This wide spread casts a great deal of responsibility upon the salesman and the buyer. The differentials between the grades and classes of cattle require a more refined or higher degree of judgment. I will say that it is easier to make a mistake of $1.00 now than it was a quarter in 1906.

[fol. 445] I have bought cattle on St. Louis, Chicago, Omaha and Fort Worth markets. Kansas City receives more cattle of the gambling order than most other markets. We get cattle that may look very much alike but differ materially in quality. This is especially true in the fall of the year. The quality of livestock from different districts is just as different as daylight is from dark. I have to keep posted on the condition of the crops in these different sections. The climatic conditions cause a change in the beef. The dressing of the beef has very little to do with the value of the steers, but it is the quality of the beef that counts. A man's experience cannot be too broad to be of benefit to him in buying. The same thing is true of a salesman. In buying feeder cattle, we have to look ahead and

judge how those cattle are going to mature. It takes a good deal of judgment and experience to be able to tell how they are going to develop.

Q. Well, now, have you ever had any instances come up in your buying operations where you have been able to get an advantage in the price you pay for cattle by reason of more accurate knowledge of the climatic conditions in the particular territory from which those cattle were coming, say it was Oklahoma or Colorado?

A. Yes, sir, I think I have had that come up a good many times. When you speak of Oklahoma I remember when Church Bridgford was here, I think probably it has [fol. 446] been fifteen years ago, or maybe it has been twenty years. I owned a few farms down in Oklahoma and Oklahoma at that time was not known very much as a farming district, and it had only been settled up a few years, and they happened to have an exceptionally good season and they raised as good corn as they ever raised in Iowa or Nebraska and corn was selling cheap and a good many cattle were fed there and most of them had been marketed down in their local territory, but they got to coming up here because the local territory was over supplied, and Church Bridgford happened to get into that territory and had a whole train of them one day and I was at that time buying for Armour and I knew exactly how the corn crop was and knew that corn was cheap and I knew that these fellows had fed lots of corn to their cattle and I went to Church and I said: "Church, this Oklahoma cattle, don't anybody else want to buy them much; they don't kill very good, but I have got a lot of land down there and I will boost that land and I will buy these cattle; you don't need to show them to anybody else;" He said: "All right." Of course he showed them to other people but they had always been killing rough because they didn't feed them much, and I got started with him and I bought, I think, 90% of those cattle, and they all killed out just as good as Iowa or Nebraska or any place else, but it made quite a difference to the company I was working for because I had got them and got them before anybody else knew that they were worth the money. Another time, it was not exactly climate that caused this, but I was feeding some cattle of my own, and [fol. 447] I was up at my own feed lot, and I had a bunch

of cattle that was a little plain, and I looked at them and I was disappointed in the way they had done. The lot had been muddy all that winter, and I said to myself: "These cattle have not done as good as they should have." I had not been there for a few weeks. The following Monday I rode in to a pen of cattle that at first glance I said to myself that I would not buy them, but I happened to think that they looked just like my cattle and I said that this man has fed them as long as I have and conditions are about the same and I will bet that they are better than they look, so I took another look and concluded that I was right and bought the cattle, and they were cheap. If I hadn't had that experience of feeding cattle myself and understanding the conditions I would probably—overlook- them. I just cite that to show you that a man's experience cannot be too broad to be of benefit to him in buying.

Q. That same thing would pertain to a salesman too, would it not?

A. Yes, sir, it certainly would. The only difference is that the salesman would have to convince the buyer that he knew it and the buyer already knows that he knows it. That is the only thing.

(Whereupon the witness was temporarily excused.)

[fol. 448] W. T. ANGLE, a witness called by the Government, after being sworn testified as follows:

Q. When did you first become connected with the livestock industry?

A. I was born and reared on a farm which happened to be more of a livestock farm than a grain farm. All the grain that was produced we fed to livestock and consequently from childhood I have been associated with livestock.

Q. And how long ago did you leave the farm?

A. I first left the farm in 1915 when I started at the university and I was back to the farm 2 years, 1917 and 1918, then went back to the university and completed my university work. From that, I went into county agent work, and then into livestock marketing work.

Q. What university did you attend?

A. University of Missouri.

Q. What course did you take there?

A. Agricultural course.

Q. From that you went into livestock marketing?

A. I spent 2 years as county agricultural agent before going into livestock marketing.

Q. In Missouri?

A. In Missouri, Pettis County.

Q. How long have you been engaged in livestock marketing?

A. Now, going on my eighth year.

Q. And has that all been at the Kansas City Stockyards? [fol. 449] A. All except 2 years at National Stockyards, Illinois.

Q. Was that your first 2 years?

A. Yes, sir.

Q. With what organization are you connected?

A. With the Producers Commission Association.

Q. And have you been with them during your whole eight years of livestock marketing experience?

A. Yes, sir.

I am connected with the Producers Commission Association which is a livestock marketing organization incorporated in the State of Kansas for the purpose of marketing livestock on the Kansas City market and in the country. The association is a member of the National Livestock Marketing Association, along with 16 other terminal agencies and state or district marketing associations. The association was opened in Kansas City on March 6, 1923. Our association is commonly known as a cooperative, the qualification for membership being that the applicant must be a bona fide livestock producer.

Q. Mr. Angle, have you ever been connected with any so-called old line commission firm?

A. No, sir.

Q. Have you observed, in a general way, the operation of so called old line commission firms at the Kansas City Stockyards?

A. Yes, sir.

Q. From that observation will you state for the benefit of the record, what, if any, substantial difference or differ- [fol. 450] ences there are between the methods of operation of so called old line commission firms and so called cooperatives?

A. The difference is in selling. The watering and grading and weighing of livestock between the old line firms and the cooperatives is very slight, if any, difference of consequence. I could not say that the method- of handling the livestock in process of selling are different to any degree at all.

Q. I take it, of course that different salesmen among the old line firms would have some difference in their ways of selling and handling, and that the cooperative salesmen would differ in about the same way, or *I do* make the question clear?

A. Well, the variation of the salesmen whether employed by the privately owned agencies or cooperatively owned agencies is the way they conduct their work, is more, I think, a matter of the individual than it is of the organization. While, it is, to be sure, that the cooperative with an accumulation of volume has put in in the markets where they have created a large volume, a system of handling their livestock probably that it is a little different than anything that has been practiced on the market.

We commence making up our account sales anywhere from 8:30 on. The peak of the salesmaking process comes ordinarily between 1 and 5 o'clock as far as the office work is concerned. The peak of the selling in the yards on an average day is between 9 and 12 o'clock. The amount collected each day varies considerably with our association [fol. 451] from season to season. From February to July we normally get our livestock weighed up more promptly and the volume of receipts through the stockyards is lighter. In that time, it would be my opinion that 75 per cent or more of our collections would be received on the day the livestock is sold. There are other periods when we would not collect over 25 per cent of the proceeds. We find it necessary to carry a bank balance to cover the matter of remitting the proceeds of the sale before they have been collected. During the heavy marketing period of from 4 to 6 months the need of a bank balance to make prompt remittances is decidedly greater than in a period of light marketing.

Advertising and Publicity

My firm still gives subscriptions to the market paper. It does not join in the radio broadcasting conducted by the Livestock Exchange. Our circular carries with it at the

present time every few weeks a full report on the livestock situation as it is summarized by our research department, our salesmen, and other information. We try to give our livestock customers better information on present and prospective supplies of livestock as well as the demand for meats and meat products. We also give out information in regard to the sales on the market. We also give out educational information about cooperative marketing. That report is sent out once a week. That report goes to our members. We try to eliminate those members who are not immediately interested in shipping livestock to the market. We handle livestock for both members and non members. [fol. 452] The National Association publishes our monthly livestock paper and supplies us with research material for our market service. The National sends us no favor or specialties for our customers. Our calendars and all those things are gotten through our national office and are paid for proportionately by our respective terminal agencies. Our monthly paper is called the National Livestock Producer. We furnish a list of names for our territory and the National Association mails the paper direct. We are billed for our proportionate cost of operating the paper. The cost is apportioned on the basis of the number of papers going into each market agency's territory. That cost appears on our books. The research report comes to us every 2 weeks and it gives us information in regard to the immediate supply of the different classes of livestock, changes in feed prices, conditions of the dressed meat trade, prospective demands for meats and probable future trends. We pay the National Association a flat 50 cents a car and part of that goes towards our research department. That cost is shown on our books.

The office of the National Livestock Marketing Association is in Chicago. Its advertising is very limited, and is not particularly adapted to bring us business. It does not carry any solicitors. Now and then we make contributions to that organization in connection with special projects. We pay our proportionate part for the calendars that we get here at Kansas City, and we contribute to the Inter- [fol. 453] national Livestock Show, the Boys and Girls 4-H Club, and the Junior Farmers' Banquet. The National Livestock Marketing Association does not furnish us anything for which we do not pay or make some form of contribution. Our soliciting is done practically entirely by

our buyers and salesmen. We have a classification of expenses for educational purposes. It covers programs carried on in cooperation with county agricultural agents and State Agricultural Colleges relative to the grading of livestock in the country and the factors which enter into the determination of the price of livestock. The purpose of this is to get the livestock producers to cooperate with the marketing agency in trying to supply our market more nearly with the quality of livestock that we need to maintain profitable levels or prices.

Our firm does radio broadcasting. It broadcasts the day's receipts and the estimates for the following day, and information in regard to the price of livestock. We also give information in regard to specific sales at the market made by our firm. We contribute some of our research material to our radio broadcasting. The radio broadcasting is used for all those purposes that will give the livestock listener a better picture of the market, the general trend in prices, the supply situation, and the condition of the dressed beef market. We broadcast from five to ten minutes each day at 12:25.

Only a small portion of our total business is made up [fol. 454] of cooperative livestock shipping association shipments. There are probably more plural ownerships in our consignments from the individual shipper than we handle for shipping associations. I am acquainted in a general way with the present tariff and the variations that occur in making charges. I have always felt that the tariff as it stands today is too complex, due to the fact that many countrymen cannot understand it. A farmer may ship four loads of cattle to this market during a year and probably the number of head in each car will vary. He will compare his four bills, and find that he was charged four different amounts. In his way of thinking the charge should have been uniform. I would prefer a tariff that is simplified to the extent that any countryman could read it and understand it without explanation.

As general manager of the Producers Commission Association it is part of my duties to employ salesmen.

Q. Have you given any thought or consideration to the number of cars of various species of livestock which a good

salesman should be able to handle in the course of a year, taking the livestock just as it comes to this market?

A. Some; yes, sir.

Q. Would you state your views in that matter?

Mr. Bohannan: Let me add to that question——

Q. Assuming, of course, that he had that many to handle. What I mean by that is, that the number of cars he handles may be limited by the number he can get to handle, but [fol. 455] assuming that he could get all he could handle.

A. The number of cars that a butcher cattle salesman can handle at this market, and throwing into carload department the truck-in business, as it runs to the average firm in the way of odd head, the number that he could probably sell would vary considerably from the number that the steer salesman, and selling western stocker and feeder cattle, or western slaughter steers, or even native slaughter steers could handle.

Q. And why would that be, Mr. Angle?

A. Well, the shipping association, the truck department, to a large extent, includes cattle for the butcher cattle salesman to sell, veal calves and cows, at various degrees of flesh, and bulls, different grades of butcher heifers, and it gives him so many various head of animals to determine price upon, separately from the balance of the load, that it naturally consumes more of his time to find an outlet for a carload of butcher cattle, especially the cooperative shipments, than it would take a salesman of like ability to sell in the steer alley, or even in the butcher alley, if they all ran a straight load of heifers of one weight and one quality, and same degree of fleshness, practically so, all belonging to one owner.

Q. Do I understand that the salesman could handle more fat cattle—I mean fat steers—than he could of the butcher class? Is that your idea?

A. That is it, because the countryman that feed cattle are [fol. 456] different, or they carry their business on differently.

The average man that feeds steer cattle, feeds a carload. There are those farmers who feed a few odd head of steer, but they are not very numerous, but the number of farmers that produce cows, low cutters and cutters, low-grade butcher cows, medium, good, and choice cows, and some different grades of vealers and grades of bulls and grades

of heifers, every form practically than is around this market, produces some of those butcher grades, and many of them, practically all of them, when they get to market, they have got to be marked out to the respective buyers that are interested in each one of those classes and grades of livestock, whereas in the steer alley you won't find the number of ownerships represented on any one day or on the average, on any week of any year, nearly so much as in the butcher cattle alley.

Q. And did I understand you to say that the salesman should be able to handle more cattle in the steer alley than in the butcher alley?

A. Yes. As receipts come to this market, I would say so.

Q. Now how about stockers and feeders?

A. Stockers and feeders that originate in the Southwest and come to this market in carload lots usually come in such a manner that they do not require a great deal of sorting and shaping, and to turn over a rather relatively large volume of sales on that class of livestock is probably as easy, and can be accomplished with the smallest amount of time of any grade of livestock offered for sale on our [fol. 457] market.

Of course, the truck—in stocker and feeder cattle of this market, a few head in every day, practically, to every firm, and sometimes many head to some firms, are oftentimes slower to move, and to find the probably outlet for, than probably a carload of the same class of cattle.

Q. The truck-ins would tend to reduce the total amount that a salesman could handle?

A. I would think so, yes, sir.

Q. Now, considering all those things and including all the classes of cattle, all the kinds, including the truck-ins as well as those that come by rail, and taking them as they do come, that is taking in to consideration that there are peak periods in the year that you cannot get them evenly distributed throughout the year and that you cannot get them evenly distributed throughout the week, considering all these things and the conditions as they exist right now, I do not mean just as confining your considerations to this past week, but considering present conditions of an annual basis at Kansas City, and expressing it in terms of carloads; would you say that if a good cattle salesman had that many cattle to sell he could dispose of 1500 carloads in a year and do it as it should be done?

The Witness: May I have the question?

(Whereupon the question as heretofore recorded was read by the reporter.)

A. Yes, sir.

[fol. 458] Mr. Bohannan (continuing): Do you think he could dispose of any more than that number, Mr. Angle?

A. Yes, I do.

Mr. Bohannan (continuing): Would you state how many more?

A. I have often reasoned in my mind about how many cars of livestock a good salesman, with average ability to make sales, and average capacity as a salesman, or better than average, could make in an average day, and it resolved itself into a question of how many the buyers will buy from him on a given days, or if he has got the big run of cattle in his alley, one particular day and his surrounding firms have gotten few. I sometimes think that the market gets along better by that concentration of volume rather than having it scattered from the standpoint of making sales, and I have often thought that in our end of the yard, which comprises about half the yard, we have separate packer buyers, head packer buyers, and also butcher cattle buyers in the other half of the yards, and that it appears that about two to three to four salesmen or somewhere in that neighborhood are idle while they are waiting for another salesman to release the buyer, and in the volume that is being handled by the firms in our end of the yard, and the same applies generally to the yards, it is difficult to determine just how many cars could be handled as the maximum if a firm were given sufficient livestock, cattle, to be graded into their respective classes, and the salesman put in charge of each grade, it is just a little difficult to determine how far he might go in the [fol. 459] making sales, as long as he had buying power in proportion to the livestock he had for sale, but I, in a general way have always considered that any salesman who would be entitled should be called a good salesman, could sell at least five carloads of livestock on the meanest day that we normally have at Kansas City, and on days when if he had the livestock there are many days he could sell a hundred. The factors entering into how many he can sell are many, due to the fact of the tremendous num-

ber of firms doing business and the volume sways this way and that. One firm has a big day one day and maybe the next day his runs are light, and it comes and goes and sometimes when a salesman has only a few cars of livestock and some other firm may be, or several firms have large runs of the same kind of livestock, he, most of the times, has to wait to get a buyer, and he is delayed in making his sales just about as much as if he had four or five times as much as he had or all that four or five surrounding firms have because he has to wait until the buyers go around, that he is going to try to sell to, and wait on those firms anyhow.

Q. And I believe you have already stated that salesmen could probably handle less of the butcher class than other classes of cattle, the butcher class taken as a whole, in your opinion, could a salesman handle as many as one thousand five hundred cars of butcher cattle in a year?

A. Taking the butcher cattle as they come on our market, [fol. 460] carloads and mixed lots of butcher cattle, I would say yes.

Q. Now, with respect to hogs, Mr. Angle, would a good hog salesman under these general conditions I have outlined in the questions and you have outlined in the answers with respect to cattle, would a good hog salesman be able to handle more or less hogs than the cattle salesman could handle cattle?

The Witness: I am inclined to feel that men of like capacity, that the number of cars that either could sell, the hog man as compared to the cattle man, would not vary a great deal. The same principal applies in one department that applies in the other. If you give a man ten carloads of cattle of like weight and flesh and quality and sex, when he finds a buyer for one of them he has got them all sold, and the same thing is true in the hog alley, with buyers on our market, packer buyers willing to buy large numbers, a man in the hog alley, with the increased truck business at this market, offers additional necessity for the yarding separate and additional sorting due to the truck-in business being split up on each truck farmer's own livestock, it has to be segregated and sold separately, and in the main I would say that the hog man could sell as many and I would be inclined to think more cars than the butcher cattle man could sell in the butcher cattle department. I

would not say that would be true of the steer department.

Q. And, how would it be with respect to the sheep salesmen?

A. Well, in the sheep department, selling can be done [fol. 461] with more speed or more cars handled with more ease on the part of a salesman proportionately, I believe, than either cattle or hogs. Especially is that true of the western and southwestern sheep consignments coming in by carload.

Q. And, you could give us, approximately, your opinion as to how many cars of sheep a good salesman should be able to sell in a proper manner?

A. I should think that, conservatively, he could handle 1500, or 2000 cars.

The Examiner: Is that single deck or double deck, to which you refer, Mr. Angle?

The Witness: I had reference to the single decks.

Mr. Bohannan (continuing): Mr. Angle, in view of the fact that your Producers Commission Association is one of the Respondents in this proceeding, and has not been represented at this hearing by counsel, is there any statement that you would like to make, either in respect to the things about which I have questioned you, or any other matter that you think is pertinent to this hearing?

Our association is not primarily interested in the level of charges, so long as those charges are enough to permit our agency to function efficiently in the marketing of livestock and build up a reserve sufficient to secure it against losses that might be temporarily sustained.

[fol. 462] Cross-examination:

Our association has been in business at Kansas City since 1923. Any savings above expenses made by the association are the property of the members. Any one who desires to do so may consign livestock to our association. In so far as I know there has been no inefficiency in our management. Of course, I do not know what transpired before I came to the market. I have been manager some five years past.

At the National Stockyards I was in charge of the shipper's room or publicity department. I worked some in the stocker and feeder department, and assisted the manager

in his work. I do not sell livestock, and have not sold any livestock worth mentioning. I am not termed as a salesman. I have tried to run the affairs of the Producers Commission Association efficiently and economically. I am fairly well satisfied with our present employees. During the past year our board of directors has considered the employment of additional salesman. The contemplated plan we had of employing additional men would have been as a supplement to our organization. Up to this date we have handled approximately one thousand cars more of livestock than we did during the same period in 1929. We were merely considering the furthering of our sales organization by departmentalizing our selling. I do not know how many cars of cattle per man our cattle salesmen handled last year. The number of cars that the salesmen in our organization sold last year is not a guide as to what they might have sold had they had sufficient livestock. My ob-
[fol. 463] servation is not limited to the work in my own organization.

Q. You have not been connected with any old line firms on the market?

A. No, sir; other than I can notice the volume of selling they do, and it is not difficult to ascertain the number of salesmen selling.

Q. Well, now, what particular firm did you have in mind in that connection?

A. I did not have any particular firm in mind.

Q. Do you know of any instance upon this market where the average number of cars of cattle sold by the individual salesman of any market agency on the market was more than 800 cars?

A. Do I understand you to ask, do I know of any salesman in any firm, that sold over 800 cars of livestock?

Q. No, do you know any firms where the average per car sales of its salesmen, classified as they ordinarily are, in the performance of their duties, amounted to as many as 800 cars a year?

A. I haven't made it my duty to trace down and check carefully the number of cars of livestock sold by the average salesman of the privately owned firms here at the yards.

We interviewed some cattle salesmen when we were contemplating the employment of an additional man. The

increase in our receipts has been both in rail and truck-in [fol. 464] shipments. I would have to look at the records to determine how many cars of cattle we handled in December, 1929, or during the current month. During this month we have handled approximately 150 cars of cattle. I presume the stockyard record of 1176 cars for the 12 months period of 1928 is correct. I do not carry the total number of cars of cattle we handle for the year in my mind. The cattle salesmen which we employed during the year 1929 were idle during a portion of the time. They were not idle two-thirds of the time. The customary hours of work vary somewhat with the season of the year and the volume of business handled. Our salesmen come to work from 6:30 to 7:30 usually. They remain in the yards until the trading is over, which is usually between one and three o'clock.

We have to wait from an hour to three hours to get over the scales during heavy runs, and before the salesman can get his tickets and mark them, the livestock have to be weighed. The yard boy can bring the tickets to the office, and the salesman can mark them there just as well as he can in the alley. Our salesmen do not always stay out in the alleys until the tickets are marked. Many times the jack pot stuff is weighed out late in the afternoon, and the salesman is in writing his letters while the boys are finishing up the jack pots.

In my estimates as to the number of carloads of livestock that a salesman could sell, I presume that he would be properly supported with the necessary yard help.

[fol. 465] Q. Well, now, were you including, in your salesman work, the time necessary to make up those tickets and the time necessary to write the letters that a salesman has to write, explaining his sales, and all that sort of thing, and still giving that salesman the benefit of the same length of day, that is not working, starting in at 6 o'clock in the morning and working until 8 o'clock at night, or were you assuming some hypothetical condition where the salesman sold livestock all day?

A. I was assuming, in my answer to the question, to the number of carloads of livestock that a salesman could sell, that he would be properly supported at all times with the necessary yard help and sorting and weighing and watering and getting the tickets around for him to mark, con-

sidering, at all times, that the salesman's time is the most valuable time of anybody in the yard employ, and that less expensive help should be employed to support the salesman in his work.

Q. And you were figuring on having your less expensive help mark the salesman's tickets, were you?

A. In many cases, yes, the yard men mark the tickets.

Q. Without the aid of the salesman?

A. Absolutely.

Q. Is that the practice of your firm regularly?

A. Well, we frequently have the price and the number of animals and everything recorded on the sales card at the time the sale is made, and it goes right to the scales with the shipment, and so long as the buyer and seller [fol. 466] agree on the price, certainly a competent yard man can write it down just as easily as the salesman. At least, that has been our experience.

During the year 1929 we had three cattle salesmen part of the time and four the greater portion of the year. I have no reason to doubt the figures of the Government auditor showing that our cattle salesmen handled an average of 432 cars per salesman.

Q. Well, you mean that your salesmen, as other salesmen, perform other duties, in addition to their salesmanship, do they not?

A. I mean that they could sell more livestock, each and every one of them, if they had it to sell.

Q. Then, there was no need for having this supplemental man in your judgment, to handle that additional two or three hundred cars that you have had this year?

A. I do not consider that our increase in the cattle department amounted to two or three hundred cars, and consequently would not want to essay a reply on a question and state that was all the business we had handled in the way of an increase over a year ago.

The scale congestion in the yards ties us up more or less throughout the year in our butcher cattle department and also in our hog department. It oftentimes causes at least two hours or more delay in getting our hog tickets. The congestion in the butcher cattle department is due to the large number of head of butcher cattle that have to go over these scales and the number of firms using the same [fol. 467] scales. We handle a considerable amount of drive

in business, and the number of scale drafts is large. We have a separate scale for the carload cattle. We have a set of rules at the yards that governs us, and one of these is that no firm shall advertise that it has superior scales or pen facilities over his competitor. We have always tried to comply with that rule.

Our association is incorporated under a Kansas statute. Every cooperative in this country must comply with the Capper-Volstead Act, as well as with the particular State laws under which it is incorporated. One of the requirements is that we must not sell more livestock for non members than we do for members. We do not charge any membership fee. Not all who ship to us are members. I do not know exactly the percentage of our shippers who are members. When a man becomes a member he signs an application blank for membership. He does not agree to let us market all his livestock. The purpose of our advertising and soliciting is to get business, and make those persons members either before or at the time they ship or afterwards. The purpose of our radio service is to inform our members and non members as well, and we have no way of determining who shall receive our message. We are inclined to believe that our radio broadcasting has meant a field of service to the livestock trade, particularly among those shipping to the Producers Commission Association. Our broadcasting was inaugurated something over four years ago, [fol. 468] and was on the air before the exchange started its broadcasting, and probably the exchange broadcasting is just a duplication of our broadcasting service. We are not trying in any way to duplicate the United States Department of Agriculture market reports which were on the air before we started our broadcasting. We give our time to other phases of the livestock marketing subject instead of the day to day tendency in prices on the market. I did not know that the exchange had a rule which prohibits its individual exchange members from using a radio as a means of advertising or soliciting business. I do not know of any such provision in the Market Practice Agreement.

My firm gives about 300 free subscriptions to the Daily Drovers Telegram. Each subscription costs a little less than $5.00 per year. We have tried to confine those subscriptions to livestock men and other men who are in a

position to need market news service. There are persons who have asked for it whose commissions would not be sufficient to pay for the paper. We do not give it to every customer who requests it. 6 or 7 years ago we did not send the Drovers Telegram complimentary to our customers. The competition was so keen and the privately owned firms played that point up with the customers so strong that we finally decided to send the paper. Our subscription list has not increased since the Exchange members ceased sending the paper out. We are continuing to send it out now because our competitors used it as a weapon at one time and we figure that it would be [fol. 469] well to carry these customers along. It does not necessarily follow that our policy should be the same as that of the Exchange. What we will do in the future about it is a matter to be determined by our Board of Directors. Our other paper is published by the National Publishing Company which is a subsidiary of the National Livestock Marketing Association. Its office is in Chicago. Our firm has no stock in it. I was not present in Chicago when the details were agreed on in February, 1930. The capital of this publishing company is around one hundred thousand dollars. My association subscribed to the capital of the National Livestock Marketing Association. I do not recall the amount. The National Livestock Marketing Association was organized by the terminal livestock cooperatives over the country, that were already in existence at the time it was organized. I think one or two new ones came in which were just getting into business. The Farm Board approved their set up. It was a set up consisting of all those which had been connected with the producers organization. I believe we had 17 agencies. They are located at the markets at Fort Worth, Denver, Sioux City, St. Joseph, Chicago, Peoria, St. Louis, Indianapolis, Evansville, Cleveland, Cincinnati, Pittsburgh and Buffalo. There are other market agencies located at Columbus, O., Springfield, Ill., and Cedar Rapids, Ia. For our stock we paid cash and part future payment. If I remember correctly it was around $2,000 which [fol. 470] we paid in cash on the first payment. The subscription was based upon the relative number of carloads of livestock handled by our agency. I was not here in 1924, but I believe that the agency did not make any money that year. Our agency was making money the

first 7 months of its existence and it created a very large volume. A boycott was thrown on the firm which destroyed the volume of business and with an overhead built up to handle that volume a loss could not be avoided. I visited the yards at that time. All our agencies started on borrowed capital. We had made no other deposits when we went into the Market Practice Agreement to guarantee our trades other than what we had before. I think that agreement was taken exception to by the Board of Directors of the Producers Commission Association on the strength of the fact that it was an agreement which would prevent the association from its fullest development in carrying on its livestock marketing work. I could not say off hand what our deficit was at the end of the second year or any other year. There was a deficit in 1924 and from that on it was liquidated gradually until it was cleared up. (Whereupon counsel for Respondent requests the production of the financial audit of the Producers Commission Association for each year during the period of its operation.) (Witness stated that he did object to bringing the financial history of his association into the record unless it was to bring something in particularly pertaining to the case at hand and then only upon the authority of duly elected officers of the associa-[fol. 471] tion. During a part of that time the witness states that his association did not enjoy normal trading conditions and that over half the volume of business was taken away because of those conditions. (Examiner deferred ruling until the following day.)

There are times when the items of collection are sufficiently long in getting around that money paid out is paid out before those items are collected but the bank gives us credit, and to that extent, I do not consider that our account is overdrawn. The bank got practically all the interest which we paid last year, as shown by our audit. That was paid to banks, as interest on carrying our floating obligations. I have a copy of our membership application form which was requested, and a statement of the number of persons added to our complimentary list to the Drovers Telegram, up to 1930, which number is 76. The personnel of the countrymen feeding livestock changes from season to season and the number that have ceased to handle livestock in our trade territory

over the past few years has been especially large. We find that there is a heavy turnover in the persons that get the Drovers Telegram. So far as I know the balance sheets shown in the Government audit are correct. I think we have deposited $10,000 in securities with the Market Practice Committee. Those securities do not represent money belonging to this association. It belongs to member agencies of the National Livestock Producers Association. Some one else receives the interest on those se- [fol. 472] curities. The National Livestock Producers Association is being disorganized and the members of that association are now members of the National Livestock Marketing Association. The National Livestock Producers Association which developed the 12 marketing agencies which were all in existence at the time this deposit was made was interested in the development of all its agencies. It is due to the common interests that all agencies have that they offer to carry this deposit for us until such time as we wish to take it over. Our agency has never paid a refund on patronage dividends to shippers. We used borrowed capital during the year 1929. When we buy a lot of cattle for a customer we pay cash and accept his promise to pay. We carry the investment for 5 or 6 days and the bank charges us a clearing fee to clear that check. That is a cost of marketing to us and I wish we had some way of making the customer pay it. I believe we paid 8% on the money which we borrowed from the bank. According to the audit the total operating expenses were $76,211.57. With us, a fellow works for his money before he gets it and we have the commissions collected before we pay our men their salaries. I believe there are months in which we do business at a loss and I think that would be true of a great many market agencies. I think that it is reasonable to assume that 1/12 of that amount might normally be needed to operate a commission house when the volume ot expenses is that much. We have some money invested in equipment and we purchased new equipment since January 1, 1930. [fol. 473] There is no reason why a commission firm or market agency should not have as attractive an office as the average business man. I do not regard our investment in furniture and fixtures as excessive. The Producers Commission Association did not have during the year, 1929, $40,000 in working capital, and I cannot say

that we needed it, and working with the capital that we did have we did not feel handicapped in giving service to our customers. Our business overhead in 1929 approximated 1,000 cars of purchases of livestock. In practically every case a draft or check was drawn to secure the payment. That volume of our business was probably proportionately greater than that of the average firm. I do not recollect the amount of the hog dockage in 1929, but it was paid as soon as we were billed for it I consider the 50¢ a car paid to our national organization as a proper expenditure.

Under conditions as they actually existed in 1929, the amount spent by my firm for advertising was reasonable and proper. I feel that the amount expended was larger than it should have been, for the reason that the Producers Commission Association is gradually building back the volume which it lost in previous years. In 1929 our business showed an increasing volume. The general talk throughout the nation in regard to cooperative marketing led us to feel that our association should get in line with the national program. Our association has not taken any position or action with respect to market [fol. 474] charges at this market. The national association is the clearing house and headquarters for all market agencies and it carries on the national legislative work, rate cases on transportation charges, and other things that have a national aspect to them. It has been the policy of our association ever since it was organized, to promote grower owned and grower controlled livestock marketing associations. This program received the Government's approval in 1929, and we took it as a signal for our association to advertise more extensively than we had previously done. I cannot say just how much was expended on specialties and novelties. The chief specialties were canes and pencils. Practically all of our canes were passed out through the office and mostly on request.

I have read technical bulletin No. 57, issued by the U. S. Dept. of Agriculture, entitled "Cooperative Marketing of Livestock in the United States by Terminal Associations." To a certain extent we have followed the suggestions on page 35 of this bulletin, which says, "More and more associations are using short articles in local papers, which carry information about the company and

sales and purchases made for stockmen residing in the circulation territory of the paper." This bulletin also refers to broadcasting of market news, and we do that. To a certain extent we advertise in newspapers and farm magazines, as suggested by this bulletin. In a few instances we have possibly placed advertisements in spe- [fol. 475] cial publications of other cooperatives. To a certain extent we pass out literature, as at county and State fairs. I do not recall that we maintained a booth at any fair in 1929. The bulletin also refers to country road signs, and we follow out that program. We have placed road signs on the leading roads coming into Kansas City. I do not know how many of these signs our association maintains; I would say approximately 200 or more. Our association has followed a great many of the suggestions contained in this bulletin. We have sent our financial statement to our membership at times, giving volume of business handled and earnings made. When it is convenient and I think it is practical, I follow the practice of supplementing the work of our field representative with publicity.

(Examiner rules that counsel for respondents has a right to examine the witness on anything pertinent to the matter of cost, expenses, and so on, from January 1, 1929, to date. Counsel for respondents offers to prove the results of the financial transactions of the Producers Commission Association beginning with the year 1923. The offer of proof was denied.

(Counsel for respondents requested the witness to produce the general ledger of his company showing its financial operations during 1929.

Counsel also requested the production of the private ledger, if one is kept, cash book or cash journal, the minutes of the directors' meetings, pay roll, check stubs, and [fol. 476] records of purchases and sales.)

The records of the association are in my custody in the absence of the president and secretary. (Witness stated that when the material was being collected for this hearing, "I agreed to an exchange of material taken from our books by the Government auditors and similar material taken from the respondents' books. I thought we were giving the Exchange members sufficient information from

our records. I would decline to bring these books before this hearing to be spread before the record."

(Witness states that if there is additional information needed from his books, it is agreeable to him that a representa-*vie* of the Department go and get such material. Examiner overrules the witness' objection and rules that the books should be produced.)

I tried to make the different items of expense reasonable during the year 1929. Taking all the items as a whole and in a general way, I would say they are reasonable. I would say that probably our advertisement was a little out of balance compared with what it normally should be. The expenses of salaries in our organization, as regards salesmen, are probably a little out of proportion to what they would normally be if the association was getting as much livestock as it could sell. Our association has tried to employ and maintain a complete selling personnel for each class and grade of livestock in each department. We have [fol. 477] not consciously followed the suggestion on page 33 of Bulletin 57. Our plan of getting out circulars and the information contained therein have varied somewhat in the past several years. I feel that it is desirable for the manager of our association to get into the country, to get a check-up on his association's services, to get the feeling of the men who are being served, and pick up from them the problems which they feel need to be solved. I would say that he should spend a small portion of his time in the country. Strictly speaking, I doubt whether we have an employee who might be called a field man. Our field work, or soliciting, or country trips for the purpose of invoicing, inspecting, or sorting livestock, or making country meetings are done by the regular resident employees of the association. They are used in accordance with the demands made upon us from the country for services. As stated on page 31 of this bulletin, the field service varies with the locality. The item of refused purchases, amounting to $1,182.23, appearing in our audit, represents loss of several purchases. From 1929 there was considerable fluctuation in the price of stocker and feeder animals. In view of the fact that our association purchases livestock rather extensively on country accounts, both by mail order and by telephone and tele-

graph, the losses during this declining period were the greatest we have ever sustained. That loss is out of line with our normal experience in buying and was greater than the loss suffered in the four years' previous buying. I agree with the statement on page 19 of the bulletin in [fol. 478] regard to the responsibility of the salesman. I also agree with the statement on the same page relative to the service of yardmen. I agree with the statement on page 37 of the bulletin relative to the importance of maintaining and keeping trained employees. I think there is a limit to which salaries can go, but as a general practice I think it is good policy to keep trained men, even though it is necessary to increase their salary. We have not decreased salaries and increased advertising expenses. I agree with the statement on page 23 of this bulletin in regard to the necessity of maintaining an adequate force of well trained employees in the office. We employed an office manager during the last 2 1/4 months of 1929. He was employed the entire year of 1930. We had some clerks who worked only a portion of the year. Some of them were experienced help, and others were used on a type of work which did not require skilled help. I have no reason to believe that the figures on page 75 of this bulletin, relative to the volume of livestock handled by our agency from 1923 to 1926 inclusive, is incorrect. I could not verify those figures from memory. (Witness is handed a letter written by his organization containing a statement in regard to having the best pen location in the hog house.)

This is a letter written by one of the salesmen of the Producers Commission Association. He has been advised that it is not in accordance with the practice of the yards to make such a statement. It is a relative matter in the [fol. 479] mind of every commission firm as to whether it has the best pens. It is difficult for me to say whose pens are the best in the stockyard. I did not like my salesman putting that statement in there, and he has been warned not to do that again.

Respondents' Exhibit No. 14

Whereupon the letter referred to, being marked Respondents' Exhibit No. 14, was received in evidence.

We are making loans on livestock, and we secure our money for that purpose through the National Livestock Credit Corporation of St. Louis, which is a credit corporation organized to discount paper for certain cooperative marketing agencies. That organization was formed in 1930 by several of the member agencies of the National Livestock Marketing Association. Our agency took part in its organization. I have not been advised that the National Livestock Credit Corporation is advancing credits from Farm Board money. It is the successor to the Producers Livestock Credit Corporation, and it gets its money from the Federal Intermediate Credit Bank at St. Louis. I do not know the exact cost of the money to our credit corporation. I know that it plans to secure some funds through the National Feeder and Finance Corporation to help increase its capital stock. The funds of the National Feeder and Finance Corporation come from the National Livestock Marketing Association. The plan was to loan five million dollars to the Federal Intermediate Credit Bank, under which livestock loans [fol. 480] could be discounted up to fifty millions dollars. The Producers Commission Association at Kansas City is not loaned any money coming down to us through the credit corporation from the Federal Farm Board. We do not know the interest rate that the National Livestock Marketing Association is paying on any money. We are charging our borrowers six per cent. It depends on the cost of setting up the loan whether any additional charge is made. We charge the borrower additional cost in making his loan only when the livestock is being financed, that is, not being purchased through a terminal market or through one of our representatives. Our association makes no profit on these loans. At the present time I do not know what the discount rate is at the Federal Intermediate Credit Bank at St. Louis. My association is a member of the National Livestock Marketing Association. The credit facilities we offer to our customers and the livestock producers of this trade territory have been available some four years or longer. They are gradually being used more extensively, and have probably resulted in some increase in our business. We have not advertised our credit department to any extent. We sent out a circular under date of December 11, 1930, to 1500 livestock men, in which the interest rate on our loans was mentioned.

It is my understanding that the Intermediate Credit Bank is not prejudiced against any particular group of livestock men in discounting their paper.

[fol. 481] Respondents' Exhibit No. 16

Whereupon, Respondents' Exhibit No. 16, same being a copy of the market letter of the Producers Commission Association, under date of December 11, 1930, was received in evidence.

I have always heard that commission firms loaning money require that livestock be sent back to them for sale. Our association feels that in the protection of our interests we would not care to loan money on a product which some one else might sell in competition with us. I believe that our reason for selling the livestock on which we have mortgages is for our own interests.

Respondents' Exhibit No. 12

Whereupon, Respondents' Exhibit No. 12, the same being a mimeographed letter of the Producers Commission Association, a credit statement, and a form of application for loan, was received in evidence.

Respondents' Exhibit No. 15

Whereupon, Respondents' Exhibit No. 15, the same being a copy of an application for membership in the Producers Commission Association and association membership in the National Livestock Marketing Association, was received in evidence.

Respondents' Exhibit No. 17

Whereupon, Respondents' Exhibit No. 17, same being a copy of the rules and by laws of the Producers Commission Association, was received in evidence.

[fol. 482] We pay the 50 cents per car for the support of the work of the National Livestock Marketing Association out of the commission charges collected. We do not deduct it from the shippers' proceeds. We cooperate with county agents in carrying on our work—county agents are the representatives of the State Agricultural Colleges and the

United States Department of Agriculture located in the several counties surrounding this market. They are paid by the State and Federal Governments, and by local Farm Bureaus in some counties. County agents in this territory are not taking any of their time to solicit shipments for this association. I would say that in the neighborhood of one hundred county agents are located in the counties from which livestock is consigned to this market.

The Producers Commission Association did not become a member of the National Livestock Marketing Association without the other agency and all other terminal cooperative livestock marketing associations in this country being given due opportunity to come into the system that was finally approved by the Federal Farm Board. I do not feel that it is by any act of the Producers Commission Association that any other terminal cooperative commission agency here or elsewhere is not in this system. I believe that the agricultural cooperatives are in a position to go forward and increase their business and increase their service to the grower.

It is generally correct that the Federal Farm Board de- [fol. 483] sires to have only one selling agency on each market. The members of the Farm Board have endeavored to get all terminal livestock cooperative marketing associations to come into one single national program with one organization. I believe we loaned more money this year than last year. The borrower, in his application, agrees that in case the loan is made to sell his livestock through a terminal agency of the National Livestock Marketing Association. To my knowledge there had not been any previous allotments of money to the Producers Livestock Credit Corporation. I am reasonably positive that all of our paper which was discounted in 1929 went through the Intermediate Credit Bank at St. Louis. We have made loans whereby we collected an inspection fee when the loan was made, and we have oftentimes collected the inspection fee when the loan was closed out. Without exception, every loan of livestock that we have set up in the country we have charged an inspection fee for setting it up. I believe that persons buying cattle on this market should pay for those cattle in such a way that the commission firm buying the cattle would not be compelled to pay interest charges

on the investments for several days after they have paid for the cattle.

When we get an order for livestock the fact that we fill it on this market may or may not improve the demand for livestock on the market. When we go out to buy livestock we have to buy it in competition with other buyers, and [fol. 484] when we find the livestock that we want we may have to pay a little higher than somebody else if we get them. In the process of filling orders competition is increased, and, therefore, we help to sustain prices. I think it has a tendency towards his favor in shipping livestock to this market.

We have all kinds of shipments of stocker and feeder cattle to this market. We have many cattle run in straight carload lots, and quite a number of cars of fairly uniform quality and sizes. Practically all grades of stocker and feeder cattle are available on this market. I have never added up all the grades or classifications of livestock that come to this market, but there are many available. We have steers in the slaughter division, and they are divided into weighty steers, medium weights, long yearlings and yearlings, baby beeves, and light yearlings. Then there is a further subdivision as to fancy, choice, good, medium, common, and culls. The factors which affect price are demand and supply, the amount of flesh, the State or territory that the cattle come from, and the quality.

Redirect examination:

We have not employed additional salesmen which I referred to. (Witness produced his records as to volume of livestock received in 1929 and 1930 and such records were examined by counsel for Respondents.) Our association handled 806 cars more of livestock the first eleven months [fol. 485] in 1930 than the same period of 1929. That increase covers all species and includes inbound and outbound carloads and trucked in business. It also includes 89 cars handled in the country. The increase in inbound receipts for this period in carloads and trucks was 453 cars. Whereupon the witness was temporarily excused.

[fol. 486] A. J. MAURER, a witness called by the Government having been previously sworn, testified as follows:

Cross-examination (continued):

Stocker cattle are entirely different from packer cattle. When you buy a stocker steer you are buying one that is thin and one which a man expects to carry along on rough feed for several months. You have to know whether the steer will develop into a good smooth beef steer and will be a fast grower. The buyer must be judge enough to look into the future of the animal. In buying a feeder we look for a good many of the same qualities as we do in buying a thin one. His hide must be mellow and he must have good conformation. In their purchase or sale you have to take into consideration a lot of factors that relate to the breed and the origin. You can tell the origin of most cattle by the looks of them. A man might be a perfect judge of livestock and be a poor trader. He has to be a real trader to be a successful operator. He has to have intuition to feel what is going on in the market. A man must have initiative and be able to form his own judgment. The buyer must have the knowledge to know whether he is filling the order. You can substitute sometimes if a market is scarce enough but if you go to substituting cattle you will lose your business.

It might take me two or three years to get another organization as good as my present one. Every part of that organization has some value. I have a boy that follows me [fol. 487] around and if he is a wide awak- youngster he will observe cattle and call my attention to things that I might overlook. When I was a packer buyer I took pains to train and develop young men and boys who were assisting me in order that they might work into higher positions. I gave them special training with reference to obeying the rules of trading. It was a hobby with the packers that they must live up to all the rules of the Exchange. In the buying of the fat cattle I don't believe I have lost two per cent of my customers since I have been in business. My business has been increasing since I have been in the order buying business. I buy for packing houses in the East owned by Swift & Company and by Armour & Company. The Omaha market has a more uniform type of cattle than any market in the country that I am familiar with. There is

more of a change with respect to stocker and feeder customers. There are some men that go out of business on the stocker and feeder end of it. I retain the majority of my old customers. My gross commissions and net profit from 1922 up to the first eleven months of 1930, inclusive, are as follows:

"1922—Gross Commission	$13,567.26
1922—Profit	3,933.93—No salary.
1923—Gross Commission	14,722.00
Profit	624.80—No salary.
1924—Gross Commission	20,289.00
Profit	8,533.28—No salary.
1925—Gross Commission	20,875.00
Loss	2,994.94—No salary.
[fol. 488]	
1926—Gross Commission	26,692.84
Profit	6,065.42—No salary.
1927—Gross Commission	35,740.50
Profit	7,478.09—No salary.
1928—Gross Commission	34,387.71
Profit	307.10—No salary.
1929—Gross Commission	38,845.33
Profit	11,609.91—No salary.
1930—Gross Commission	32,442.35—11 months.
Loss $916.15	6,783.85—11 months.
Sal. 7,700.00	

Average profit 9 years $4,704.00."

I am afraid we would have a mighty unsatisfactory market if it were not for the Livestock Exchange. I believe the clearing house facilities, hog dockage system and the other systems for which it provides the working machinery are essential to the proper functioning of the market. I have not known many men engaged in the commission business on the Kansas City market to grow rich out of the operation of the commission business. I have known a few commission men who seem fairly well fixed and prosperous but they made the most of their money out of the cattle loan business. It has rather been the history of anyone who continues to make cattle loans while they would prosper for a few years there was always a break which took away all the profits. I do not remember a single one who had over

$40,000 when he passed away. I have a ranch out in Colorado.

Redirect examination:

It is to the interest of the order buyer to have a plentiful [fol. 489] supply of cattle on the market. A large supply and a low price may induce the packer buyers to buy heavier than it is wise. It is not always to the interest to the buying side of the market to have prices bid down to the lowest possible level. The buying side of the market is always trying to get the livestock just as cheap as it can. It is natural that the livestock markets should spring up along the Missouri River. The river was much closer to the point of production and it is economical to kill the beef close to the point of production and ship the dressed beef. The stockyards antedated the big packing houses. The big packers came later. Most of them get a bonus and they also found it was to their interest to ship beef rather than live cattle. The major beef demand is still in the east but the demand in the middle west and the west has increased with increasing population. The demand has increased with the increasing population but I do not think the consumption of beef per capita is quite as great as it was on account of the high prices. The greatest change in the methods of buying by packers has taken place in the last ten or twelve years. This change has come about because the packers have had to make their business more efficient. There has been a gradual tightening up ever since the war. I feel that there is a revolution imminent in the distribution of meats. There is too great a spread in the price the beef costs the retailer and the price it costs the consumer. It either involves retailing by the packers or the packers [fol. 490] putting on a method whereby the retail overhead can be reduced. Cattle actually shrink in beef as they are kept off of their regular feed and water. I have many a time cut a lot of cattle in two, half of them being killed here and the other half being shipped to New York City. The shrinkage runs anywhere from 1½% to 3%. The seller usually knows how the cattle have been handled and the buyer doesn't. The buyer has to go by the looks of the livestock. We get fooled once in a while. There is a richness to the hair of a corn-fed animal that you cannot get in a short fed one or a grass one. Practically all the cattle

that come out of Fort Worth are grass cattle and they come in big strings. St. Louis is a little on the same order. St. Louis has a class of cattle from southern Missouri that are a little on the gambling order. They are fed on blue grass and finished up on corn. In the wintertime Chicago gets as much an assortment as any market. The bulk of their good cattle are easy to buy and the western are a pretty uniform type.

Armour & Company paid a higher salary to its buyers at Kansas City than it did at Omaha and St. Louis. They did not pay more to their Kansas City buyers than they did to their Chicago buyers. Kansas City is the second largest cattle market in the country. There is a larger percentage of well bred cattle than there was a long time ago. I don't think it has improved materially in the last ten years. The conditions which I have described with respect to the up [fol. 491] and down of quality through good breeding apply to the Kansas City territory about the same as elsewhere. I would not say that there are kinds of cattle coming to the Kansas City market that do not at all go to the other markets. I think we get more of them than other markets.

The packers break their men in very gradually. I employ a similar method in my business. If a man wants to go down in the stockyards and start in the order buying business he can start. I think it would reflect on anybody who intends to do business with the public if he didn't do the right thing. Trading on the market could not go on very good if the parties had to draw up and sign a legally binding written contract on each transaction. The only reason I know that the subsidiaries of Swift & Company and Armour buy through me rather than through employed buyers is that I give them a better service.

I have one buyer that I trained. The other cattle buyer was with Wilson & Company for 14 years before he came with me. The one I trained entered my employment as a weight taker. I paid him an errand boy's salary. As he showed ability and advanced in his duties I advanced his salary gradually. If he had not shown himself worth his salary he would not have been advanced. I had to compete for the services of the man I employed from Wilson & Company and I give him a salary accordingly. There is competition for the services of a good man. I haven't a man working

for me what they have not tried to take away from me. I have had one, two or three taken away from me because [fol. 492] they were offered more money.

Recross examination:

I have two men working for me now who have been offered quite a little more money than I have been paying them. I cannot afford to pay them any more. They tell me they would rather work for me, and they know that they will always have a job as long as I am in business. I did not promise them more money. I try to be caréful and economical in my transactions. I gave $167 for charity which went to the Community Chest. If a man did not use a telephone, and use it very frequently, he would be out of business. Whereupon, the witness was excused.

[fol. 493] Mr. L. G. Trickett, a witness called by the Government, after being sworn, testified as follows:

I am secretary and treasurer of the Kansas City Stockyards Company. I have supervision and custody over the records of the company.

Government Exhibits Nos. 8-A to 8-H

These are the annual reports of the Kansas City Stockyards Company for the years 1922 to 1929, inclusive.

Our chief clerk has a record of the commission firms, and the information as to the commission firms on the market contained in the annual reports is compiled from these records. Each commission firm files a bond with the stockyards company. The information as to the receipts and shipments of livestock is taken from the records of the stockyards company. The railroads bringing livestock to this market serve the southwest territory, Kansas, Oklahoma, Missouri, Texas, some Nebraska, Colorado, Utah and Wyoming.

Whereupon Government Exhibits No. 8-A to 8-H were received in evidence.

The stockyards company keeps a record of the number of cars of each species of livestock consigned to each of

the commission firms monthly. That information is taken from our train sheet or unloading record.

[fol. 494] W. B. Ecton, a witness, called by the Government, after being sworn, testified as follows:

I am a cattle salesman for the Producers Commission Association. I have been connected with the livestock industry since 1887. I went into business with another party at the Kansas City stockyards. At that time I would sell my sheep, then go to the hog alley and sell the hogs, and then go back to the cattle alley. Now I sell fat cattle. I went to Chicago in 1893 and sold cattle there for 20 years. I have been with the Producers Livestock Commission Association since its organization on the first day of March, 1923. I have an assistant. He assists me in selling fat cattle, and also sells stockers. He was a Kansas man, and looks after the Kansas trade principally. The heavy days are Monday, Tuesday, and Wednesday. I arrive at the yards about seven o'clock in the morning. The market is supposed to open at eight o'clock, and lots of times the buyers do not start before nine o'clock, or later. We go out at eight o'clock and get our cattle all prepared for sale. We have yard men for watering and feeding and driving them to the scales after they are sold. When the cattle need sorting, I sort them with the assistance of the yard men. The purpose of sorting is to shape the cattle up where we think the shipper will get the most money. Very little sorting is required in the fat cattle. I aim to sell these cattle the way they will bring the most dollars. I try to keep as many together as possible. The cattle [fol. 495] which come to the Producers Commission Association come from every direction. We get them from all the States that are tributary to our market. We get all kinds. The yardman is supposed to do the weighing, but if they are all busy we help them out. If the market is good, we get through by 12 o'clock, and if the market is slow we may be there until three o'clock.

I do not do much office work. What I do is mostly in correspondence with the shipper. I do not take care of all the correspondence. Mr. Angle generally does that. I might write to a particular shipper regarding a sale that

I made. I think there are a great many localities where the trade has turned toward the Kansas City market from the different territories. Some of the heavy cattle have gone to Chicago. We are getting a better class of cattle than we used to. They are more uniform, and we get more good cattle. There has not been much change in the sorting required in the fat end of the cattle. The sorting comes in the stocker end and the butcher stuff. With respect to that, there is a great deal more sorting now than formerly. The packer buyers try to buy them as cheap as they can, and we try to sell them as high as we can. I have not seen much change in the buying methods of packer buyers. They buy the fat cattle. There are days when I sell all the fat cattle for our firm. I used to buy quite a few cattle, but we have men who do the buying. Some days it would take us longer to sell than it would take a buyer to buy cattle. [fol. 496] I should think it would be an easier matter to fill the orders where you have the man with you who sees just what he wants. Generally, I think it is easier to fill the buying order than it is to sell.

The number of head in the car makes no difference whatsoever in the time required to sell a car of cattle. Butcher stuff is sold most anyway you can. Different buyers buy it. Where there are mixed grades of butcher stuff in a car, it would take more time where there are more head in the car. The difficulty is due, not to the number of head in the car but to the mixture. That is generally true of stockers and feeders. We have lots of stockers and feeders that come in straight which can be sold in one bunch. Again, we might get a mixed bunch of stockers and feeders which would have to be sorted up. If they are good cattle, the same number of fat cattle trucked in are not any harder to sell than if they had come by rail. We have quite a number of consignments by truck containing as much as a carload of cattle. I do not handle "seconds." I am no good on them. I always tell the trader to take them to somebody else. They are generally hard to sell. They buy them too high, and they want to try to make some money on them. At times they fix the minimum price which they want to get. I think they are a detriment to our trade. If you are in the habit of selling seconds, and get a shipment of cattle from the country that look rather stale, the packers do not like to buy them.

[fol. 497] I cannot give you any estimate of the number of cars of cattle I have sold this year. I have sold 75 to 100 car- lots of days in Chicago. I never had that many here. I could not sell 75 to 100 cars a day at the Kansas City market under present conditions. There are days when you can sell a large number of cars. We have plenty of days when we can sell 40 cars of cattle quicker than we could sell three some other day. We do not seem to have the demand for this stuff that we used to. They do not have the orders for them. We used to sell a man a string of 15 or 20 cars. Now, if we show a buyer 20 cars and sell him two we have done pretty well. We have had days in which I have sold as many as 25 cars of cattle. One day this week we had 20 cars of cattle, and we got rid of them early. I sold the most of them myself. If the demand is right, we sell 25 just as easy as five. From September on through the fall of the year we have our heaviest run of fat cattle. Taking the market as it is, and considering how the cattle come, a salesman could sell more than 1500 cars of cattle in a year. I think he could sell more than 2000 cars in a year. I would be perfectly safe in saying that he could sell 3000 cars in a year. I am referring mostly to the class of cattle that I handle. In the feeder class, a man could sell more than that because they come in big bunches. I don't know how many a regular butcher man could handle. I do not think he could sell as many as [fol. 498] 2000 the way the shipments come to this market. The butcher cattle take more work and more time than the other kinds of cattle. We try to sell every day, and we carry over very little.

Cross examination:

Buyers are probably a little harder to please than they used to be. I do very little sorting on these fat cattle. I sell them as they come, unless there is something to take out, such as an inferior animal. I am trading with the buyers along just as I always have. There are about only four days in a week that we could figure on as active days. We get more fat cattle on Tuesday than we do on Monday. We get the big end of the fat cattle on the first three days of the week. I do not know how many loads of them I sold in 1929. Some days we would have very little to do. I could not say what percentage of my time was spent in

standing by. We have quite a few days during the year that we are not busy. There are quite a few days when we are busy. I am busy part of the time and part of the time I am not. I generally go home at four o'clock if I haven't anything to do. If I have anything to do I stay later. I try to work our cattle out thoroughly before I sell them. I had this assistant salesman in selling fat cattle in order to work up some new business. He had a lot of friends that would follow him. Friendships go a long way in the commission business. I could have gotten along without him. I have never attempted to determine how many loads of cattle I sold last year or this year up to date. [fol. 499] I was always ready to do my duty. The other salesmen in our firm had lots of work to do. They are there from early in the morning until the work is done. When there was work to do, they worked, and if they had nothing to do that was all of it. I could not tell you how much of their time they stood around.

Very few of the corn fed cattle have to be sorted. Fat cattle actually do not require much sorting. We may have to take off a few odds and ends once in a while. They sell better from some districts some times than they do from others. That depends on how they have been handled, and how they have been fed. The butcher stuff goes to a different class of trade from our fat cattle. We have different buyers for them altogether. The buyers do not altogether determine the price and value. We have some say so.

When I arrive at the yards in the morning I change my clothes, talk to a few shippers, and then go out into the yards and go to work. I go into the yards about eight o'clock. If there is any sorting to do I get my cattle prepared for the market and see that the boys get them watered and fed. The time required to prepare the cattle for market depends on how many I have. Sometimes it takes quite awhile. It might take an hour or longer. We generally start to water the livestock at eight o'clock. The yardmen assist in doing that. Then I lay in the alley and watch for some victim to come along, and try to sell him some- [fol. 500] thing. One buyer comes in at a time, and if we cannot trade with him we get another one. I have been out longer with three loads lots of times than I have with 25 or 30. It depends a great deal on the market you strike,

and the orders. The buyers want a certain class. The number you can sell depends a great deal on the condition of the market. There are days when we can sell a great many more cattle than we can on others. The demand has all to do with it. I sell them. I don't just dispose of them, and by selling them I mean I get the highest price for them. I price them, and if the buyer does not like the bid I go and get some one else. There are days when buyers are bidding lower than other days. There are plenty of days when we are through by 12 o'clock, and other days we are there until three selling cattle. If the first bid looks right I will take it.

I do not know the number of head of cattle that I have sold for my company. I have kept no account of it. The receipts are very uneven. I have no figures as to the variation in receipts during the different days of the week and throughout the different periods of the year. The fall months are the heavies- period during the year. I have known instances where shippers having 10 or 15 cars of cattle ready for market have consigned them to different firms. In my opinion, the shipper always got the worst end of it. There are not near so many shippers that do that today as there were years ago. When I started in for the Producers I bought some cattle for them. It was only dur-[fol. 501] ing the boycott that there was a big turn over in our customers. We had a good year the first year up until along in the fall. We lost a lot of our stocker and feeder trade at that time. It took quite a while to get it started back. I do not know anything about the turnover in the personnel of our customers on the buying side of the business. We hired the assistant cattle salesman when our business was growing, and we thought he had a good following. I thought he was a competent cattle salesman or I would not have hired him. He goes to the country. I go out very little now. I am letting some of the younger lads do the running around. I would rather be home selling cattle when they come in. His trade has always been the Kansas trade. He does not handle Kansas cattle exclusively.

Redirect examination:

There are 208 active market days during the year. If you looked around the yards there would be a lot of cattle

salesmen going at 12 o'clock, if they got through down there. A lot of them leave the yards whenever they get through. I never heard of it if they stay there until 10 or 11 o'clock at night. There is nobody working on Sunday, unless it would be the office men or the watchman. I am of the opinion that some cattle salesmen stay in the yards longer than I do, and a lot of them stay a whole lot less time. I have seen them leaving early. The ability and the following which a salesman has count a whole lot. I try to keep myself informed as to the general market [fol. 502] quotations. I try to keep posted as to the market and its condition by looking at our own sales and other sales and reading the market report. I think the prices received for livestock by our firms compare with any other firm in the yards. I think we get as good prices as any other firm. I go by the receipts at this market and other markets. That information is posted early in the morning. We get the Daily Drovers Telegram, which contains a market report. It comes out about half past three in the afternoon, and I generally look it over then. There is no doubt in my mind but that a cattle salesman could handle three thousand cars in a year. I have never had a chance to handle that many on this market, but I feel sure that it could be done. The Producers Commission Association commenced business on the first of March, 1923, and the boycott began in the late fall of 1923.

Recross-examination:

The boycott hurt our stocker and feeder business worse than anything else. I have nothing to do with the inside work. I am of the opinion that we always had insurance. I don't know the number of head of cattle handled during the different years since our firm has been in business. The receipts have a great deal to do with how many head of livestock one can properly sell. The condition of the market has a great deal to do with it. It is necessary for our association to make constant efforts to get new business on the buying side of the market. I certainly think it [fol. 503] takes training and experience to make a good cattle salesman. He occupies a position of responsibility as a salesman. His competency should be of value to the man whose livestock he sells. I do not think that the ordinary farmer could come in and do an adequate job on

the yard in selling his own livestock. We have to be on good terms with them, and show them that we are always straight and square. There has been a tremendous change in the way livestock has been fed and fattened for market during the last 10 or 15 years. There is a considerable difference in value depending on the manner in which the livestock has been fed. The value runs anywhere from 3½ to 14½ a hundred, and a few years ago it used to run from 2½ to 4. It takes just as much judgment when we were selling at four as it does now at 13. The difference has not added to the responsibility of the salesmen. I don't think you could slip any dollar or dollar and a half a hundred on good cattle just now. The differentials between the different grades of cattle are constantly changing. I keep posted on the receipts from day to day, and I often compare the month's receipts.

Whereupon, the witness was excused.

MR. HOMER G. BURNS, a witness called by the Government, after being sworn, testified as follows:

I am employed by the Packers and Stockyards Division [fol. 504] of the Bureau of Animal Industry, United States Department of Agriculture. I am an accountant. In my employment I am engaged in making audits and investigations of commission firms, stockyards, and packing houses. I have always held some accounting position since I was out of high school, and have completed a course of accounting in the Tanner-Gilman School in Chicago. I have done various studying continually in the accounting line. I have been engaged in accounting work in the enforcement of the Packers and Stockyards Act since October 6, 1924. A recent audit was made of the business of the market agencies who are respondents in this prece-ding. This was under my supervision and direction. It began on April 15, 1930, and was concluded in the early part of August. I was appointed to supervise this particular assignment. Mr. John J. Bachmann is my immediate superior.

(Witness gives names of those who worked under his direction, including those who are accountants and those who are not accountants.)

Those who are not accountants were assigned to tabulating the receipts by mode and by species, also, the purchases of the market agencies under this investigation. The auditing work was assigned to the accountant. I made several of the audits of small firms. It was our endeavor to standardize the audits so that they would be of value for comparative purposes and for distribution of both the income and the expense. We prepared a copy of instruc- [fol. 505] tions to each auditor that he might follow in order to keep the audits standardized. If problems came up which were not adaptable to that form, the matter was discussed with me. The main difficulty that the accountants had was in the allocation of the expense to the legend or the class that we had given in the instructions. The difficulty arose chiefly out of the manner in which the records were kept by the various commission firms. Minor differences arose as to whether an item came under operating expense or non-operating expense. We tried to maintain the sequence of the various items of income and expense throughout each audit, and the audits will be found to conform to the instructions which were given to the auditors. Each of the various market agencies keeps a ledger, cash book, and a sales journal, in most cases. They also keep account sales and account purchases. At times we may have consulted other minor records. The first act was to take off a trial balance as of December 31, 1928. Then we took off the closing trial balance for 1929. Those two records, after a complete check had been made of the assets, income, and expense, were incorporated into what has been referred to here as the Blue Audit. A complete analysis appears in the work papers. The work papers are the accountant's first move towards consolidation of the data for the final report. The trial balances are the principal papers in the work papers, and are supported by the detail taken from the records of the firm covering each account in the work papers. The [fol. 506] Blue Audits constitute the final statement, and are the result of the examination of the records of each individual agency. The Blue Audits are prepared from the work papers. I have the original set of work papers for each firm. For the purpose of explaining the various sched-

ules and exhibits contained in the Blue Audits, I will select Firm No. 54, as I think it is more of a representative firm, and because the nature of the business takes in all the various branches. Before making this audit, I assisted in making audits at the Omaha market for rate making purposes in 1926. I also assisted in making audits in the Sioux City commission rate case. The Blue Audits in this case cover the calendar year for 1929. Each market agency at the Kansas City market was given a number before we undertook to assign an accountant to that firm. The work papers will disclose the name of the firm. The Blue Audit does not disclose the name.

Exhibit A of the blue audit of firm No. 54 is the balance sheet at the beginning of the period. It is hardly representative from the standpoint that it contains only current assets and current liabilities. The first item in "Cash in Bank." This is taken from the ledger, in some cases, the cash book. That would vary with the amount which was on hand at the bank on the particular day. It is possible that the bank books would show a different amount on account of outstanding check. It represents the balance in the bank account at the time the trial balance was taken [fol. 507] off the record. The second item under Current Assets is "Proceeds Receivable." That is proceeds receivable from the sale of livestock consigned to the firm. It may represent uncollected balances from livestock sold. This represents bills outstanding at the time trial balance was taken off. The third item is "Accounts Receivable, Trade." This pertains to any items relating to the business at the market. It was not intended to include under this item any proceeds in the first instance. It might include collection of freight or claims or feed. I happen to have before me the audit of firm No. 35 whose balance sheet seems to cover most of the divisions in which we classified their accounts. I will proceed with my explanation by referring to the audit of firm No. 35.

The assets are divided into four divisions, current, investments, deferred and fixed assets. This firm conducts a cattle loan business. The item of bills receivable indicates that amount of outstanding loans. Directly under this item there is an item of "less discounted." This indicates that the firm has discounted the majority of its notes through the bank. Under "Accounts Receivable" we

have two other subdivisions, "officers and employees." This indicates that officers and employees owe the agency a small sum of money. That may be for advances of salary. The next subdivision is "other" which may have nothing to do with the operation of the market agency. To the best of our ability we could not ascribe it directly to the operation of the market agency. The next subdivision is "investments". In this particular case the investment is in a branch office. It might be cash, open accounts or fixed assets. We did not attempt to analyze the business of the branch office. We might find some other firms who have investments in stocks or real estate.

[fol. 508] Whereupon the witness produced a copy of the instructions to auditors which was marked for identification as Government Exhibit 14-A. A copy of these instructions was given to a committee representing respondents on April 16, 1930. The committee took exception to our classification of travel as outlined in the instructions. We agreed, in part, to a change in that division. This copy shows that I left under the division of travel, appraisal trips, soliciting and meetings of growers and feeders. The question was also raised at this meeting with regard to the analysis of account sales. We had selected a week in each month of the year for the basis of determining the number of drafts, the number of owners and the number of account sales. We substituted the week of January 21 for the week of January 14. We saw a possibility of saving the respondents the trouble of making these individual audits themselves so we submitted to them the instructions as a practical way of taking off the data from the various firms' books. We could not submit one firm's audit to the secretary of the Exchange or anybody else without orders from the firm whose audit we had made. Originally we submitted two copies of each audit to the firms. Later when the Exchange had someone to look over the audits we delivered one copy to the member firm and one copy to the representative of the Exchange. Whereupon Government Exhibit 14-A was received in evidence.

The next subdivision under assets is "Accrued and Deferred." The first item is postage which would take care of [fol. 509] any inventory of postage. It might be stamped envelopes, postcards or postage stamps. Office Supplies and Stationery would be an inventory of envelopes, paper,

stationery and forms. The next item is "Supplies" which takes in whips, forks and shovels. The next deferred asset is "Advertising Supplies." This might consist of circular letterheads or cards. The next item is "Interest" and would be where the firm had accrued interest.

Under the next subdivision of assets we find "Furniture and Fixtures." This represents the necessary desks and furniture, safes, accounting machines, furniture and fixtures set up on the books. We took the figures as they were stated on the books. If the account was so kept in the record as to provide for a reserve account for the individual items of furniture and fixtures, we set that up separate. If depreciation had been credited back to the asset account, we made no effort to go back and determine the amount of the depreciation that had been charged off in prior years. A little further in these instructions to auditors we provided that they set up the depreciation for 1929. If we find it necessary to charge off depreciation for 1929, we try to do that on a just basis. If no depreciation was charged off in 1929 we charge it off on the basis of figures that the books represented as being the furniture and fixtures account. We did not question the amount of depreciation charged off by a firm where it had charged it off.

The next subdivision is "Automobiles" and the next one [fol. 510] is "Horses." These were handled the same as furniture and fixtures. The next item is "Memberships." Where memberships were set up on the books we took them at the book value, not questioning the cash or market value. We tried to get the number of memberships regardless of whether they were shown on the books. The next division of the balance sheet covers "liabilities" and that is divided into four subdivisions; current liabilities, accrued and deferred liabilities, reserves and net worth. The auditor could adopt the form of net worth which was applicable to the firm he was assigned to, depending upon whether it was a corporation, partnership or a single proprietorship. The first item is "Bank Overdraft" which represents the book balance reflected by the firm. It does not necessarily mean that the firm had an actual bank overdraft. There might have been sufficient money in the bank to meet the obligations and yet the firm may have had outstanding at the time checks or drafts which would be in the nature of transit items.

The next item is "Notes Payable." This was divided into three subdivisions. The first is "Notes Payable, Trade" which could be anything pertaining to the market agency or resulting from the operation of the business. The second one is "Officers and Employees." We had to depend on the firm to classify these notes in all cases. We depended a lot on the firm's explanation of the various accounts. The next item is "Other."

[fol. 511] Accounts Payable or open accounts were subdivided the same as Notes Payable. Deferred Liabilities consist of interest and other items. The next item is "Reserves." We seldom find reserves. We had a reserve for insurance or employee liability in one or two instances. The next item is "Net Worth." There is a classification applicable to corporations which covers capital stock and surplus. The next classification covers the net worth for a partnership and is labeled "partners capital, undivided profits." The partners capital is the figure taken entirely from the books. It is what the partners have set up as their investment in the business. The next net worth item covers a single proprietorship and provides for owner's capital. We have provided here only one classification covering the balance sheet which is applicable to both the opening and closing balance sheet of both Exhibit A and B of the blue audit.

The next division of the instructions is the profit and loss statement. It is divided into two subdivisions, income and expense. We have divided the commissions into selling commissions, buying commissions, selling service or split commissions, and commissions for the clearance of traders. In the case of all the larger firms they separated their selling and buying business. The small firms accumulated their commissions and we analyzed that account to determine the amount of buying commissions and the amount of selling commissions. The split commission applies to the case [fol. 512] where a firm receives sheep but has no salesman and delivers the sheep to a firm which specializes in sheep. The commission is divided between them. The income from selling seconds is included under the commissions for selling. There is another item under income for trading profit and loss. In the blue audit there is a further subdivision of income showing income from country commissions. There is another source of income in cases where one firm rents office facilities from another firm. Under expenses we find

salaries divided as between owners and non-owners. In most cases the owner has set up in his expenses an amount which was labeled as salary. In the case of individuals they naturally operate for profit and their salary determined by that profit. If it were a partnership and they had not previously set up a salary in their expenses, we set up their earnings as salary, if there were earnings. We accepted the amount that was charged off as the salary. I think there were firms who had not provided for salary but took the division of profits. The salary in such cases was determined with the assistance of members of the firm. They would naturally have to state the proportion of the salary or the proportion of the earnings that was due to each member of the firm. There were instances where the net profit was divided and set up as salary after a consultation with members. Where there was an individual we considered the result of his operation was his salary. In all cases non owners salaries were taken from the record of the firm or the company we were auditing and the [fol. 513] title of the individual was obtained by consultation with members of the firm.

The next division is "commissions paid." Commissions paid in selling service would be commissions paid to a salesman as compensation in lieu of salary. Commissions paid for soliciting would be in the instance of an employed solicitor, paid on a percentage of the business developed. I do not recall a single instance at the Kansas City market of a solicitor being paid on a commission basis. The next division of expense is "advertising". We have provided for market papers, newspaper advertising, circulars, postage, specialities and novelties, signboards, and bus and car placards. In most cases the advertising account was carried — one account. We endeavor to analyze the account to determine the amount expended for these various subdivisions. Unless there was sufficient information in the ledger or the journal, we would have to run these items back to the bill or the check or some other paper. In most cases there was sufficient information in the ledger or in the cash journal to provide for this analysis. The next division of expense covers "traveling," which is broken into three divisions—appraisal, soliciting, and meetings. The appraisal division was to take care of any expense in connection with the employees' trips to the country for the purpose of appraising livestock. The soliciting was to

cover the expense of travel necessary in soliciting business [fol. 514] or getting new business. The meetings division was to cover the expense of trips to feeder convention and various other conventions held throughout the territory adjacent to their market. I do not believe that there was a single firm on the market that had a travel account that could be classified into these three subdivisions. We had to depend on the firm. In some cases the firms even found some difficulty in segregating it into these three divisions.

The next item is "entertaining," which might cover meals, theaters, or anything in the nature of entertainment. With the assistance of the firms we were able to determine in some cases an amount which they thought was properly classified as an entertainment expense. The next item is "automobile expense". It was found that the automobile was used for so many other purposes in the conduct of the business that it was practically impossible to make any effort to break that expense and not having kept records in the past covering the use of the automobile in the three divisions under the travel account, we just threw all of the automobile expense under one classification. The next item under expense is "automobile depreciation." If the depreciation was set up on the books we accepted that, if it was not an exorbitant charge; otherwise, the auditor was instructed to provide proper depreciation for the year 1929. The next item is "general office expense." Such items include the upkeep of machines and typewriters, and the periodical cleaning of these machines. The next item is "rent, [fol. 515] light, and heat." The firms on this market rent from the yard company. If I am not mistaken the rental charge includes the light and heat. It was all contained in one account. The next item is "postage, general and mail service." It was our idea to cover the miscellaneous postage for mailing out checks and account sales and letters regarding the business of the day, and to separate that from the postage as formerly referred to under "advertising." A good many firms in compiling their advertising account charged postage applicable to that account directly to it. Others maintain only one postage account, and we segregated that under this classification. If it were at all possible, or the firms were willing to make a separation of the postage, we accepted their break of that account, if it was not already indicated on the books.

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The next item is "insurance on furniture and fixtures." If there was any insurance on furniture and fixtures, we set it up in this division. The item of "office repairs" covers the repairs to furniture or equipment of the office. The item of "stationery, printing, and office supplies, naturally covers anything of the nature as indicated. There is a provision for depreciation of furniture and fixtures, and if it had not been taken care of in the set up of the firm's books, the auditor was instructed to make the proper adjustment. The same procedure was followed in the allowance for depreciation on horses. The item "yard supplies" includes whips, canes, and similar items necessary in yard [fol. 516] operations. Under "yard expense" are included such items as a separate yard "phone, water service, towel, service, or anything of that kind. The item of "horse and saddle" covers any expense in connection with an owned horse or a rented horse that might be used by the market agency. That would be board or feed, or it might be the rental of a horse. There is an item of "errors, adjustments, and refunds." Minor clerical errors are bound to occur in the operation of a business that requires the speed that is found necessary in this business. This account also takes care of any overpayment or mix up in which the loss is borned by the market agency. The next item is "meals," which covers meals to employees where they have been detained at the office at odd hours for the benefit of the firm. The item of "legal and auditing" covers the employment of legal and auditing services in connection with the operation of the particular business. The items of "charity and donations" "taxes on personal property," and "telephone and telegraph" are self explanatory.

The next item is "insurance." It covers the field of the employee, theft, or liability in connection with the livestock. We have not made any separation between the two forms of insurance. The idea was to set up all insurance other than insurance on furniture and fixtures under this one heading. The work papers will show the nature of the [fol. 517] insurance that is included under this subdivision of the expense. The item of "bonds" covers the premium on bonds of any nature given by the market agencies. The item of "exchange assessments" is divided into national dues, local dues, death assessments, insurance, and bonds. We found that the assessments here are made on a per

car basis. It was rather difficult in some cases to make a very thorough analysis of the expense assessments of the individual firms. We could determine that there was a payment to the exchange, but whether it was for any particular service rendered by the exchange we could not determine that. The insurance covers a blanket policy provided by the exchange which the members secure by a flat monthly charge. That was life insurance. The item of "bonds" covers bonds given to the exchange for the fulfillment of obligations. I do not recall in the Blue Audits any individual payment to the exchange for the item of bonds.

Then we come to the item of "general expense," which covers items where no segregation is possible. Another item is "directors' fees." This is a normal expense where the organization is of a form that requires or provides for the conduct of the business under the supervision of directors.

The remaining two subdivisions of the profit and loss statement are "additions to income" and "deductions from income." It was our endeavor to include under additions and deductions any income or expense accruing in the current period, but not directly related to the operation of [fol. 518] the commission business. The allocation was made by the auditor assigned to the particular firm. The first item under "additions" is "interest received." It is difficult in a good many cases to determine the gross interest received. The item of "interest" shown on the books might be the result of interest received and interest paid. It might merely be a net balance in the interest account. The items of "gain on branding, vaccinating, and feed," cover any expenses in which more might be collected from the shipper for those services than was charged by the stockyards company. These items were of minor importance on this market.

The item of "outside operations" provides for any outside business that the agency might control or operate. The item of "interests" under "deductions from income" represents interest paid. The item of "bad debts" covers such matters as advances to shippers which are not collected. If the firm had charged it off, we set it up as a bad debt. The item of "bank exchange" covers the exchange on moneys handled through the bank. The next item is

"outside operations," which covers any loss occurring on outside business other than the commission business. The item of "net profit" represents the current operations of the firm, regardless of the source of income.

The next division of this audit is the analysis of net worth, and is shown as Exhibit D in the Blue Audits. This shows the balance at the beginning of the year and any changes from current operations, changes in prior years' [fol. 519] operations, changes in assets, or changes in liabilities. The first entry under this analysis is the balance sheet at the beginning of the year. Under additions to the net worth balance we find net profit, additional investment, income from previous periods, and profit on the sale and trade of capital assets. The deductions from the balance of net worth cover withdrawals, either cash or capital, losses on sale or trade of assets, losses in previous periods. Losses during the current period, and any other deductions. The next schedule in the audit is the analysis of commissions, and is designated as Schedule No. 1. There are two divisions—selling and buying. This analysis is self explanatory.

The next schedule, which is Schedule No. 2, is a classification of salaries. The salaries are divided as between owners and non-owners. This page is self-explanatory. If the time devoted to the business by each individual was indicated on the books and records, we accepted that. If it was not indicated, we secured the information from some one in charge of the office. The same applied to the nature of the duties of each individual employee. Their title was determined either from the books or from someone in charge of the firm's affairs. We had to rely almost entirely on those in charge of the business. Very few of the firms maintain a payroll journal or separate payroll account. We were only too glad to have them classified for us. The nature of the records necessitated it. Where an employee [fol. 520] is engaged on a commission basis it is classified as commissions paid.

Schedule No. 3 shows the livestock sold and the livestock bought, classified as to species and mode of handling. Under the cars column, there is provision for single deck and double deck, and the total number of head received. I think this schedule is self-explanatory. The volume figures were secured from the account sales in so far as the selling was

concerned, and the account purchases for the buying division.

I checked the results shown on the working papers into the pencil copy which was the basis for the Blue Audits. (Witness gives the numbers of the firms audited by each of the auditors.) A copy of each audit was furnished each firm immediately after completion and final check. They were delivered in April, May, June, and possibly one or two in July of 1930. When we received the order of inquiry I listed the firms and gave them numbers. Some numbers are omitted in the audits because the firms had gone out of business or were not operating in 1929.

Whereupon, Government Exhibits Nos. 14-1 to 14-86, the same being the Blue Audits heretofore described by the witness, were received in evidence.

(It was agreed that the work papers supporting the Blue Audits would not be introduced into the record, but would be available to either the Government or respondents for [fol. 521] the purpose of tabulating any information therefrom deemded pertinent by either party, such information to be presented to the other party 15 days in advance of its introduction into the record, either in the proceeding before the Secretary or before the courts.)

Cross-examination:

My first information in regard to these instructions was through Mr. Bachmann. Just what association the Secretary had with them I do not know. I had some suggestions in regard to them. I am not in a position to say whether they are standard or not. In preparing the instructions ahead of the audits we have included some classifications that were not used on the market. It is the combined result of the experience of the Packers and Stockyards Division. The main purpose of the audit, as I understood, was not to determine the financial standing or status of any particular market agency, but to give attention to the matter of income and expense and its complete analysis. It was my understanding that this order of inquiry was for the purpose of an investigation of rates. It was my understanding that we were to secure data that would permit of an analysis of the income and expense according to the mode of receipt and the species involved in the different modes of receipts, or the modes of purchasing. It was my idea that I was to

supervise the breaking down of the income and expense in a manner that would be elastic enough to apply to some application in rate making. We were constantly in touch [fol. 522] with the schedule as it was effective in 1929. The income which was somewhat classified according to the tariff then on file naturally falls into divisions in making the analysis. We tried to classify the expense in a manner broad enough to apply it directly to any income source. A major expense which could be classified directly to the income source was salaries. It was my understanding that the instructions to auditors were broad enough in their scope to analyze the various balance sheet accounts and income and expense accounts, so that they could be applied in determining the amount of the rate charges. With the information in the books and the cooperation of the firms, I thought we were getting a very good analysis of their affairs.

The books and records of accounts of the several market agencies are not kept on a uniform basis. The Secretary has not prescribed a standardized method of accounting. I did not find among the accounting records any records showing the distribution of the workers' time as between the different functions of the work. There is not a firm on this market which keeps a time record of the operations of their employees. We have in some instances found an expenditure which could be properly assigned to some particular income source, but not in all instances. In the matter of income and expense we took first the book record. We thoroughly broke down all manner of income, checking it back to the papers of original entry which were the account sales or account purchases. If the firms had made any attempt to classify expenses we did not think it [fol. 523] necessary to check the papers of original entry into that. The firms did not accrue expense to any great degree in the preparation of their various accounting periods. To the best of my knowledge the books are kept on a matured basis. The expenses are of such a nature that it is not necessary to carry an accrual of expense or accrual of income. It is a business with a quick turnover and there is no necessity for inventories of any great proportion. The only contingent liability to my knowledge would be the notes receivable discounted. We did not make any search for unbooked assets. If it came to our attention that

they had furniture, fixtures, horses or automobiles employed in the conduct of their business and they had not provided for that in the balance sheet, we tried to make reference to them in the work papers.

As I understand the organization of John Clay and Company, the office here is operated as a branch from the parent organization. There are no owners employed directly in the operation or conduct of this branch office. We made no effort to apportion income among the owners who were not engaged in the conduct of the business. It was my understanding of the instructions that we were to apportion the net income, if any, where the owners had devoted their time to the business. If it were not indicated by the books of record and the firm called our attention to the fact that there was an agreement or some provision for the division [fol. 524] of profits we took that into consideration. My general knowledge is that John Clay controls various branches in the commission business, but he maintains and operates in Chicago an office for the purpose of loans in the livestock business. I have no personal knoweldge about the type of the organization of John Clay and Company and as to what the partners of that organization did in the livestock commission business. I do not know whether the partners in that firm hold active memberships in the Exchange.

I do not know of a firm in which all of the owners did not, or whether they do hold memberships in the Kansas City Livestock Exchange. If there happened to be an owner in one of the cooperative associations who was paid some compensation for services rendered and it was set up on the books, we set it up in the audit. I do not recall of any of their employees being producers of livestock. I do not know of any direct service to or for that organization by any of these owners that would be properly classified as salary. I think that a man engaged in business expects at least some compensation for his service and when he does not stipulate the amount he must depend on payment for his services from what he has earned out of the business. The owners have no doubt agreed with themselves, there being no other parties to the agreement, to accept as their salary what was earned in the operation of the business.

If the individual owner had a regularly monthly drawing account and set it up or wanted to consider that as a salary,

[fol. 525] we so considered it. When it came to individuals or partners who were in the business for the profits but who had not stipulated an amount or set up a value on their services, we followed the instructions and set that up as salary expense. I think there is at least one instance where there was a loss and we did not set up any salary. If that man desired that a salary be set up and would name it, we would just as soon set it up in the audit. We tried to cooperate with individuals on account of the methods of keeping books and we had to reply on them for information in regard to this anaylsis. We did not try to put a value on any man's services; we took what the books reflected. If it had been their policy to divide the profits on that basis, we tried to follow that policy. In the case of firm No. 33, the business was operated at a loss and no salary was set up. I do not know of any reason why the owner, if he so desired, could not have put a value upon his service and set it up. I think it was the purpose of all these firms to maintain a record that would provide them with the proper analysis of their operations. There might be a few exceptions, where an unprofitable business could not permit of a man setting up a salary. It would be my candid opinion that John Clay's broad experience in the business world would prompt him to keep a sufficient record in his branch office to indicate the profitableness of its operation. If there were any expenses that he did not set up in the branch office record, I would think there was an oversight. [fol. 526] We concealed nothing from the firms. It was our purpose to make everything clear to the firm or individual. We considered that they had available to them, through the members of the Exchange, a copy of these instructions, and they also had accountants who were checking our work as we turned it back to them. So far as the purpose of the future application of this, or the value of the individual's service to his organization, we made no effort to determine that.

I don't think that it would be contended that the salary the man received, whether he received nothing for his services or whether he received an exorbitant sum, was indicative of the value of his service to his organization. I was analyzing it for the purpose of the order of inquiry, which I personally understood to be to analyze the rates applicable to the service on this market. I did not stop to con-

sider the application of it. So far as dividing their time between the service performed on the various species, we tried to make that clear to them. I did not know just what application was to be made of it.

In setting up the balance sheets I did not take into consideration all the assets of liabilities of an individual, whatever they might be. I took into consideration whatever he had set up in his books or records at his office on the market. He might have owned a home and outside property and I did not investigate that. It would be my opinion that a man would maintain a record of all the values that were in [fol. 527] any way contributory to his business. The only exception was in the matter of fixed assets. I would want the books to reflect any capital or any income or expense in connection with a particular business. I should not question whether these men considered that they were properly accounting for all of the capital and the income and expense in their business. I had to rely on their books and records to provide the analysis of those things. I would have to say that the balance sheets shown in the blue audits are indicative of the actual capital pledged to this business because I assume that they accounted for all of their capital. If I were conducting a business of any kind and had capital invested in memberships or anything else, I would want it reflected on my books. Why these men do not in some cases put it on there if they own them, I cannot say. It is specified in the Packers and Stockyards Act that they shall keep true and complete records of all transactions in their business. The records are quite complete with regard to proceeds of sales and the costs of purchases and the commissions charged. I naturally would assume that they would be just as exact in recording their assets and liabilities. If I had been getting up a statement I would have tried to have on my books everything that was in any way contributory to the business. I would try to have my books reflect all the assets so that when I took off a trial balance it would give me a true picture of the capital invested.

[fol. 528] Where no item of furniture and fixtures was set up on the books, we were instructed to do that. If automobiles were set up on the books we naturally assumed that they were used entirely in the business. Where automobiles were not set up on the books, I do not recall of any in which

we set them up. Automobiles would not come to our notice, while furniture and fixtures would. We did not go off the premises to search for assets. It is natural for an accountant to suppose that everything is recorded on the books. We know that furniture and fixtures are sometimes depreciated over a period of years, and if depreciation is applied direct to an asset account it becomes wiped out. We see furniture and fixtures there and know that they are employed in the business. We might not see the automobile and we know that some firms do not employ automobiles in the conduct of the business. As far as stationery and supplies are concerned, it is the general policy of a market agency to charge that out when the purchase is made and any inventory would be of small consequence. In most cases depreciation had been determined by the firm and we found it to be in accord with instructions that were laid down to us. If they had not taken depreciation, we applied the depreciation rates according to the instructions. We did not make any effort to run down the items receivable. We relied to a great extent on the particular office manager to assist us in classifying those items. It is my recollection that there are some instances where [fol. 529] there were receivables of an extraordinary nature, doubtful of collection, that were carried into the deferred assets. We did not set up a reserve that was not provided for on the books and records. I think there was only one firm which set up a reserve for bad debts or doubtful accounts. On the final net profit and loss statement we entered only debts that were determined to be bad and charged off by the firm. It is my observation that it is not the policy of market agencies to carry reserve for bad accounts. Bad accounts occur only in a minor degree in the transaction of a straight commission business. It is my observation that the books and records of the market agencies at the Kansas City market are kept about the same as at other terminal markets. I thought those accounts reflected the necessary capital and covered the obligations of the business. I do not know of any other purpose for books than to accurately reflect the cost of the services which enter into and comprise the business. There has got to be a certain amount of judgment applied in the proper distribution of expense. The foundation of it all should

be reflected on the books. My experience has been that information gathered in the field in connection or in the operation of the business in connection with any particular expense as applied to its income source, is very unreliable and that a man's judgment is just about as good as the information gathered at the time. It would be ideal if the business could carry the burden of expense necessary to ac- [fol. 530] cumulate data in classified form, but there are very few businesses large or small that permit of the expense necessary to analyze properly all of the various sources of income and expense.

In connection with Schedule No. 2 in the blue audit, the information as to the nature of the services rendered was obtained in most cases by inquiry of the firm. Such information is generally not carried on the books. We analyze those salaries according to the individual and we made inquiry as to the nature of the services performed. We did not obtain any signed statement from the market agencies showing this segregation of the services. We submitted to them in each case two copies of this audit, so that they could take exception to any classification that we made. I had no occasion to question the accuracy of the record made in regard to this segregation, and there was no exception taken by the firms. The auditors working under me were familiar with the handling of this particular schedule and were able to place it before the firm in a general manner to get as near as possible the proper title to each employee or individual. In the case of firm No. 29, owners Nos. 2 and 3 were listed as engaging in yarding cattle. This was an error which was called to Mr. Bachmann's attention. In connection with the audit of Firm No. 29, employee No. 5 is listed as selling and buying cattle. No division of time between those duties was made. No division was made in the time spent in plural and single ownership consignments. I have made no study of the [fol. 531] matter for the purpose of making a distribution of time. If I were assigned to that I would give it an awful try. The instructions with respect to Exchange memberships are found in the last paragraph of Government Exhibit 14-A. I do not know any reason why the membership should not have been set up regardless of whether shown on the books or not. I do not know the theory on which this information was to be ultimately used. The instructions

with respect to furniture and fixtures also are contained in Government Exhibit 14-A. I interpreted the instructions to represent the book or cost value, if it had not been inflated for any reason. We did not take into consideration any appreciations in value of fixed assets. I cannot say whether the book values reveal present reproductive values. Firm No. 1 is a partnership composed of two owners, referred to on Schedule No. 2 of Exhibit 14-1 as Nos. 1 and 2.

The item of "automobiles" is omitted for the reason that it was not on the books and we did not seek the information regarding the automobile. It did not occur to me that there was an automobile necessary in the Morgan business. I do not know anything about the physical association of feeder yards, or anything of the kind. I submitted to Mr. Morgan this copy of our audit on May 27th, and this is my first information that Mr. Morgan has an automobile out there.

In the case of Firm No. 1, which is a sheep firm, it is only natural to assume that they would not have some of the [fol. 532] expenses which are incurred by a firm doing a general market agency business. This firm uses as a medium of advertising newspapers only, according to this analysis. In the case of this firm there is an item of $169 for soliciting, under the heading of "Automobile Expense." It is rather unusual that this should be allocated to soliciting. Since the item of postage is not allocated in part to advertising, it is apparent that this firm did not advertise through the medium of circulars. The item of "Salaries for Owners" was arrived at from the records of the firm. The item of "Insurance" of $242.40 represents insurance carried by the Kansas City Livestock Exchange covered by blanket policy. Both members of the firm are enjoying that insurance and we found it to be $10.10 per membership per month. I did not examine the policy to determine the beneficiary. We arrived at owners' salaries by allowing the owner under a single proprietorship the full amount of his net profit.

In the Blue Audit of Firm No. 1 there is a notation on Schedule No. 2 that owners No. 1 and No. 2 each spent one month in soliciting. This is an estimate furnished by the owners of the concern in regard to the amount of time these owners devoted to soliciting. No such notation appears on the audit of Firm No. 5. It might be that Mr. Klecker did

not want to assume the responsibility of apportioning his employees' time to the expense of soliciting.

I made no investigation as to the beneficiaries under the insurance policies. I classified the payment for insurance [fol. 533] as an expense, according to the instructions. I understood it to be an expense of the business.

The blue audit of Firm No. 59 indicates that that firm is a corporation.

There has been no reserve for depreciation set up. Depreciation on furniture and fixtures has been charged off, however, and no doubt has been charged back to the asset account. There is no depreciation set up on the automobile, the value being the same at the beginning and end of the year. The absence of the reserve would indicate that there had been a change or exchange of automobiles during the year 1929. The analysis of net worth explains the charge in the operating expenses for the depreciation on these various items. It was not credited to assets as I had previously assumed, but was credited to the net worth by the auditor. That is not exactly correct accounting. It should have been credited to the asset account or the reserve set up. The effect is practically the same. You will find that the charge for depreciation on the automobile has been carried under expenses, under the heading of "traveling expenses". Under the heading of expenses the first item is owners salaries, amounting to $25,400. Four items go to make up that amount. $7,300 is the salary of C. D. Henry, $6,000 is the salary of W. L. Byars, $4,800 is the salary of F. D. Byars, and $7,300 is the salary of J. C. Swfit. Insofar as the owners were engaged in the conduct of the business I followed the instructions in [fol. 534] regard to classification of owners. I am not in a position to say whether the titles of these several employees were designated on the books of record or whether they were secured at the time of the audit, after determining the amounts paid to each individual. The item of "Bad Debts" under the heading of "Deductions from Income," amounting to $3,198.50, covers uncollectible accounts or notes receivables. A detailed analysis of that figure is not in the work papers. We had no way of determining the collectibility of the receivables and do not know whether a larger amount should have been charged off for bad debts in that year. I think it is possible to make a segregation

between the capital used in the rediscount of notes and capital employed in the sale or purchase of livestock. I would have to give the matter some study before applying any given theory in making the segregation.

The market agencies covered by the blue audits which have no furniture and fixtures account are as follows: Firms Nos. 4, 15, 18, 20, 31, 33, 37, 41, 48, 54, 56, 61, 62, 66, 67, 72, 74 and 79. That is in part explained by the fact that several of these firms rent the furniture and fixture facilities. The following commission firms rent furniture and fixtures, according to the record: Nos. 31, 33, 37, 56, 66 and 72. Of the fourteen order buyers there is only one which has set up in its records furniture and fixtures. That is Firm No. 39. The following order buying firms have no furniture and fixtures in the blue audit: Nos. 3, 21, [fol. 535] 24, 32, 38, 40, 47, 49, 57, 58, 64, 69, and 81. Those firms which rent furniture and fixtures are Nos. 3, 40, 47, 69 and 81.

I accepted these books as being an honest and accurate portrayal of the various businesses which we were investigating. There is nothing inaccurate about the figure in itself. There might be interpretations put on to the effect of the result of that figure.

On Exhibit C of the audit of Firm No. 35 postage is carried under advertising in the amount of $1,977.74, whereas general postage appears in an item not classified under advertising, amounting to $52.26. From the work papers I take it that the firm had charged to advertising that amount. On Exhibit C of the audit of Firm No. 10 postage is classified to advertising in the sum of $1,440.41, whereas under general postage the amount is $1,378.07. It is apparent from the work papers that this firm carries two postages accounts.

In the audit of Firm No. 54 there is a segregation between advertising and postage as against general postage and general mail service. Similar segregations were made in the audit of firm No. 14 and firm No. 12. I did not attempt to check back in any given instance to go into the accuracy of this segregation which appears to be widely differentiated in relative amounts from market agency to market agency.

There are some cases in which insurance is carried to [fol. 536] protect and guarantee the firms against liability

with respect to the sale or purchase of stolen or mortgaged cattle, and there are instances in which no such insurance is carried.

I do not have anything to do with the preparation of the form of annual reports filed by market agencies. I have seen very few of those reports and have given them no study whatever. It would require considerable expense to keep complete records but it would not require much additional expense to keep adequate records. I do not know what the possibilities of collective accounting are. I can visualize savings from standardization of the accounting procedure. The human element enters into the application or the distribution of income expense to any standardized form. I have never tried out what we have discussed here as the ideal lay-out for determining rates, but my observation has been that they have determined rates from any manner of records, and it has been upheld.

The following firms have no memberships set up on their balance sheets: Nos. 4, 5, 7, 12, 13, 15, 18, 20, 23, 28, 29, 31, 33, 37, 41, 43, 44, 46, 48, 52, 53, 54, 55, 56, 60, 61, 62, 63, 65, 66, 67, 68, 70, 72, 74, 75, 76, 77, 78, 79, 80, 82, 85, 86, and Nos. 10 and 36.

The following order buying firms have no memberships: Nos. 3, 21, 24, 32, 40, 47, 49, 58, 57, and 69. The following firms have automobiles set up on their books: Nos. 12, 18, 25, [fol. 537] 26, 35, 42, 48, 51, 53, 59, 62, 67, 68, 70, 71, 73, 82, and Firms Nos. 10 and 36. All other firms have no automobiles set up on their accounts. The following firms had good will set up on their balance sheets: Nos. 12, 42, 46, and 53. In the case of cooperatives, Firms Nos. 10, and 36, nothing was brought to my attention in the way of assets equivalent in value to Exchange memberships representing deposits with the Trade Practice Committee. There is no indiciation in the blue audit of the Farmers Union or the work papers of any asset with reference to an Exchange membership, or with reference to any deposit with the Market Practice Committee.

Redirect examination:

I made no attempt whatever to allocate the costs of doing business to the various services rendered according to the divisions in the tariff of rates and charges. It would be rather unusual if everything of value that partners owned were set up in the books of the separate businesses. The

practice to run down and verify every item is not generally followed in making an audit. If the purpose of the audit were to determine any unlisted assets or liabilities, the auditor would have to make a much more definite analysis. In my opinion it would not have been practical to have conducted such a search in the audit of these market agencies who are respondents in this proceeding. The work papers were made available to the respondents immediately after they were taken off the books. In the case of Firm No. 5, [fol. 538] the auditor set up automobile depreciation on an automobile that was not carried on the books of the firm. I would interpret that to mean that this firm had at least stated that they had an automobile employed in their business and had placed some value on it for the auditor to determine this amount of depr-ciation. From the work papers it is indicated that the firm charged out $200 of depreciation to expense and did not make a provision for the asset value of the car in their records. It is the accepted practice to charge off the depreciation on assets. After the asset value has been charged off in the manner of depreciation expense, there are several courses to pursue. It is the general custom to credit depreciation direct to the asset account. This $200 item to which you refer, having been charged off, does not appear to have been credited to an asset account as you have no asset account on the balance sheet at the beginning of the year. When I included Exchange assessments and insurance in the statement of expense in Exhibit C of the audit of firm No. 5, I did not attempt to pass upon the question of whether those items were proper expenses of the commission firm for rate making purposes.

In speaking of the segregation of income and expense according to species and mode of receipt, I stated that it would require an arbitrary distribution of some of the expenses so segregated. By arbitrary I meant that a reasonable exercise of judgment would have to be exercised in the distribution of some of that expense. I do not know of anything in the making of the blue audits which would [fol. 539] lead me to believe that they are not dependable as a basis for a cost study.

Recross examination:

In speaking of improvement in making these audits, I did not mean that we had reached a state of perfection. I

endeavor to learn by experience. I do not recall that there was a commission paid to employees for their services in any case. In connection with the personal insurance premium amounting to $1,368.75, shown on the blue audit of Firm No. 59, there is nothing in the work papers to indicate the nature of the insurance or by whom it was written or to whom it might be payable. These additions and deductions from income and net worth involved the use of judgment. It was my place to review these audits after the accountant had completed his analysis.

It is evident from the work papers that the deduction should have been applied to current operations and appeared under deductions from income. There is nothing wrong with the handling of the item of income tax. The auditors kept them separate as one seems to have created a reserve for income tax in 1929 and the other is in all probability an adjustment of the income tax in 1928. I do not recall any other concern at this time which had an expenditure of an income tax nature. I do not intend to convey the idea that they did not exist. I merely state that I did not recall any item, except in this individual instance. (Witness makes an examination of his papers.) This is apparently the only firm on which there was an adjustment [fol. 540] of prior income tax account. There may have been income tax paid by other firms and that payment of income tax has been allowed or included in the analysis of expense on the profit and loss statement under the heading of taxes. I cannot without making an investigation of each firm determine the amount of income tax involved.

Redirect examination:

In connection with the item of insurance premium of $1,368.75, shown on Exhibit C of the audit of firm No. 59, the working papers indicate that this charge was made direct to the surplus account of the firm. It being a current expenditure and the instructions having been to keep the current expenditures on the profit and loss statement, I made the mistake of permitting it to be shown under deductions from net worth. That would not change the nature of the item at all or in any way effect the result. Whereupon the witness was excused.

JOHN J. BACHMANN, a witness called by the Government, after being duly sworn, testified as follows: I am chief

accountant for the Packers and Stockyards Division, Bureau of Animal Industry, United States Department of Agriculture. My general duties are the supervision and control over accountants and clerks in the accounting division, making audits for rate purposes, trade practice purposes, of stockyards, commission firms, order buyers and dealers. As to the audits for rate making purposes, they have been almost entirely within my control as to the form [fol. 541] and the data to be gathered. As to the statistics for the annual reports, the form of them had been established to a very general degree before I came to work for the Department. (Witness states his training and experience.)

I have been engaged in my present duties for two years. I supervised the preparation of audits for the stockyard rate hearings at Nashville, Tennessee; St. Joseph, Missouri; Denver, Colorado; Kansas City, Missouri; St. Louis, Missouri; and the commission rate hearing at Sioux City, Iowa. I hold the degree of Certified Public Accountant from the State of Minnesota. I prepared the original pencil outline of the entire instructions contained in Government Exhibit 14-A with the exception of the second last sheet. I gave Mr. Burns instructions to prepare that sheet as I had overlooked it. It was prepared for the purpose of serving as an outline for all audits to be made in the future for commission rate hearings. While the audit of the Sioux City commission firms was being made I received instructions to designate one of our auditors to take up the same work in Kansas City. I prepared these instructions, basing my outline on studies which I had previously made of the Omaha rate hearing and such other ideas as came to my mind as to information which might be valuable for this particular purpose. After these blue audits were made I made a cost study based upon the data obtained. I have that in the form of a report. Whereupon witness produced a copy of his report and the same was marked Government Exhibit No. 15.

[fol. 542] At the time of the completion of this report, about August 10, 1930, we submitted to accountants who were representing the various members of the Livestock Exchange our pencil copy for the purpose of making a photostat copy of it. After the report was copied at Washington, two copies were submitted to the Livestock Exchange. That was some time in September. At the same

time a copy was submitted to the Farmers Union and to the Producers. Government Exhibit No. 15 is based upon the blue audits contained in Government Exhibits No. 14 and the working papers, and possibly to a very minor degree upon such additional information which we got from the various companies which may have been missing from the work papers at the time. Pages 21 and 22 of this report are supporting schedules to pages 19, and 20. The particular columns which they support are the eliminations and additions column headed "Eliminate Income," "Eliminate Expense," and "Add Expense." These four sheets attempt to and do reconcile the net profits shown in Government Exhibit 14 with the income and cost shown in Government Exhibit 15. These adjustments were made with respect to the blue audits and the blue audit data so adjusted furnished the basis of this cost study plus the working papers. When the word cost study is used I want it distinctly understood that this is not specifically a cost study. It goes further than an actual cost study in so far that it reduces all income to a unit basis as well as the cost, and it has in addition other statistical information which is not usually [fol. 543] found in the preparation of a cost study. It is rather a statistical study for rate making purposes. Pages 19 to 21, inclusive, relate to market agencies doing a commission business as distinguished from order buyers. No such adjustments were necessary for the order buyers. These eliminations on pages 21 and 22 were only such as were clearly, in our opinion, to be made. The study shows other expenses which from a rate making viewpoint might be questioned. I have particular reference to pages 35 and 36 showing the charity and donations and general exchange payments, headed local dues. These two items have been left in the expenses for the purpose of this study. I determined these eliminations and additions shown on pages 19 to 22. We did not allocate any income. We did analyze the income into species and the mode of receipt by species. The segregation of income as to the various species and the various modes of receipt was information which was obtained from the records of the market agencies with one exception. In case of mixed cars, the account sales do not show the amount of income to be allocated to the various species. That had to be allocated to the species on the basis of the unit charge weighed by the number of head. An amount so determined was either prorated up or down in

proportion with the actual amount of income received. It was necessary to allocate expenses in order to make this statistical study. Direct and indirect allocations were used. About 60% was direct to species and about 40% was allo-
[fol. 544] cated to species on an indirect basis. The records show certain expenses which could be charged directly to some one species. I mean the records of the market agencies or such other data which we gathered in the course of preparation for this hearing. The distribution of such expenses which could not be made in this direct way is shown in this study beginning on page 37. Some of those office salaries can be placed directly against the income of one species. Office salaries are chargeable to the three species indicated, and this charge cannot be made directly. The basis which we used for distribution in the case of office salaries was the number of account sales and the number of owners. The allocation was made only to species and not to method of arrival. An account sale is made out for some one individual shipping one species, say cattle and calves. Under the heading of cattle and calves there would be put one account sale and one owner, and we may have another account sale with one species and three owners. For that one there would be put down one unit on account sales and three units for owners. Then we might have an account sale for three species coming in a mixed car belonging to one owner. The account sale, how er, would be divided and the owners would be divided on the basis of one third to species, cattle and calves, one third to hogs, and one third to sheep. There would still be only one unit for there was only one account sale and one owner for each of those. The distribution of indirect expenses is
[fol. 545] possibly the most difficult phase of a cost study. The basis for distribution should come as close to the actual work which is being done by the individuals who get the salary, or in case of expense other than salary, the basis should be related as closely to the work as possible. In case of office salaries, the main duties performed by office men are the preparation of account sales and payment of checks. We try to establish a ratio between the three species on the basis of the amount of work which those individuals have done, and after we have determined such a basis we distribute the expense on that ratio. We tried to find out from the various firms the percentage of time which certain employees gave to the loan business, and for the pur-

pose of this study that was eliminated. We tried to get the amount of office salaries and stationery used in the load business and wherever we could determine that such expenses were eliminated. We tried to get the amount of expense applicable to country business and we found that was impossible. We left both the income and expense in in connection with country business and took into consideration also the number of head in these transactions and reduced the expenses on the basis of not only the head which actually went through the yards, but also the head that were handled out in the country. The indirect allocation of expenses is sometimes referred to as an arbitrary allocation. The distribution is not arbitrary in the general accepted sense of that word. The distribution is made on [fol. 546] the basis of judgment.

The next two sheets, 39 and 40, take up yarding salaries. The indirect yarding salaries were distributed on the basis of drafts. The account sales were analyzed to show the number of drafts by species and this information was accumulated for each concern separately. The ratio of drafts applicable to the various species was determined, and such expenses which could not be allocated to species directly were allocated on the basis of this ratio. It is my impression that the majority of the time of a yardman is taken up with sorting and weighing, and this is done on the basis of a very large degree of drafts. I do not think that there are any salesmen's salaries distributed on the basis of yarding. If the Blue Audits showed that the salesman's time was spent in yarding, that division was made for this particular expense.

The next item is soliciting and split salaries. The indirect salaries there were distributed on the basis of commission income. The commission income was analyzed by species and such salaries as could not be allocated to species directly were allocated on the basis of the analyzed commissions. The majority of these concerns have their sheep handled by a company which handles a large volume of sheep, and the commission is split. The heading "split salaries" covers split commissions.

Business getting and maintaining expense is shown on pages 43 and 44. The indirect expenses under that heading [fol. 547] are distributed on the basis of commission income. In the case of one firm the expense was allocated directly.

The next distribution is of office expense, which was distributed on the same basis as the salary for officers was distributed. Yarding expenses, shown on pages 47 and 48, were distributed on the basis of drafts. Administrative and general expenses, shown on pages 49 and 50, were distributed on the basis of commission income, and this distribution was made for each particular firm. In making this Government Exhibit 15 it was necessary to employ carlot equivalents. These carlot equivalents were obtained on the basis of the number of head in a straight car. As to the mixed cars, segregation was made as between cattle and calves on the basis of actual cars. The same application was made for mixed cars other than cattle and calves. The actual number of cars was taken and was divided as to species. These equivalents were calculated for each firm separately.

The determination of interest on working capital is shown on pages 109 and 110 of Government Exhibit 15. The working capital at the beginning and end of the year designates the beginning of the period and the end of the period under consideration. The amount of working capital covers approximately the value of furniture and fixtures, that is, the estimated value where the book value is not shown of the furniture and fixtures, automobiles, horses, and deferred items, plus approximately one month's allowance of ex-
[fol. 548] penses. That is, it allows for one twelfth of the annual expenses. The beginning and the ending amounts are then averaged and the interest of the averaged balance is computed at 8 per cent. The total number of cars of all species is divided into that interest to determine the per car amount. I did not pass any judgment on the rate of interest. Before I left Washington I asked Dr. Dozier about it and he suggested that I use 8 per cent.

Pages 111 to 114 give the bases for distribution of expenses. The next six pages show the volume of work handled by one man. This is the average on an annual basis for each firm. It may be that one individual in the firm handles a greater proportion of the business than another individual. If some of the men were working for less than a year, their time would be shown in the decimal figure.

There is one correction to be made on page 115, in the case of Firm No. 29. Two men should have been classed as salesmen rather than yardmen. That would change the number to three rather than to one salesman.

Pages 121 to 127 show a comparison of the salaries between owners and non owners, for salesmen and buyers, and also for office men. This table starts with the highest salaries and proceeds to the lowest salaries. Each separate item there is a separate individual. The second column is the salary on an annual basis. If one individual worked for only part of the year, his salary was reduced to an [fol. 549] annual basis. If a salesman spent part of the time in the office doing office work, there would be no adjustment in his salary made on that account.

The second part of this cost study is applicable to the order buyers, and is made on the same principles as the first part of it. The division comes between pages 127 and 128. (Whereupon Government Exhibit No. 15 was offered in evidence and ruling reserved until after cross examination.)

Government Exhibits Nos. 16 and 16-A

Government Exhibit No. 16, the same being a compilation of the receipts of livestock at the Kansas City Stockyards by days, weeks, and months for the year 1929, and January to June, inclusive, for the year 1930; and Government Exhibit No. 16-A, the same being a compilation showing the total direct hogs coming through the Kansas City market, the number of hogs going to the Mistletoe yards, total hogs going to packers outside of the yards, were received in evidence.

Government Exhibits Nos. 17 and 17-A

Government Exhibits Nos. 17 and 17-A, the same being a compilation showing the purchases of cattle, calves, hogs, and sheep by packers and butchers for the year 1929, and the first six months of 1930, were received in evidence.

Government Exhibit No. 18

Government Exhibit No. 18, the same being a compila- [fol. 550] tion showing the livestock held over in the Kansas City Stockyards by days, weeks and months for the year 1929 and the first six months of 1930, was received in evidence.

Government Exhibit No. 19

Government Exhibit No. 19, the same being a compilation showing the disposition of livestock received at the Kansas City Stockyards, was received in evidence.

Government Exhibits 20-A, B. & C.

Government Exhibits Nos. 20-A, B. & C, consisting of three pages, the same being compilations showing the number of cattle and calves, hogs, and sheep, respectively, weighed at the Kansas City Stockyards during the year 1929, were received in evidence.

Government Exhibit No. 21

Government Exhibit No. 21, the same being a compilation showing the animals slaughtered under Federal meat inspection at Kansas City, Missouri, for the years 1919 to 1929, inclusive, was received in evidence.

Cross-examination:

I have been chief accountant of the Packers and Stockyards Division since I went with the Department on January 7, 1929. I would say that the average number of accountants under my direction varies between 15 and 20. There are also from five to ten clerks. My superior is not an accountant, but my recommendations may be overruled. I am of the opinion that slight changes have been [fol. 551] made in the form of annual report for market agencies within the last two years. (Whereupon counsel hands witness a copy of Form PS-3). This is the form used in 1929. I do not recall whether or not the form is the same for 1928. (Witness was requested to produce copies of the annual report forms commencing with the year 1925 down to date). The term "total gross value" used under Item 6 on Page 2 of this Form refers to the total selling price without deductions and the total purchase price without deductions. The form does not contain any definitions of what is comprehended by gross value. I have never made any investigation to determine whether the same interpretation has been placed upon it by the market agencies. I have looked over the tariff of the market agencies and have studied it, possibly not as thoroughly as I should

have. This study began about April 20, when our auditors first came to Kansas City. The form of annual report required of market agencies at Kansas City is the same required of market agencies at other markets. This form does not have a classification of income and expenses from the standpoint of the nature and character of the services rendered in respect to species, mode of arrival, ownership, and extra services. I do not know of any annual report form of such a character being issued by the Bureau for the year 1929, or any other year. I have checked over not less than 500 of these reports myself and found in quite a number of cases where apparently there were [fol. 552] deficiencies in the records. I could not say whether that applies to this market. We have been able to get satisfactory information, at least it was satisfactory for the time being, although we have attempted from year to year to make improvements in the information that is communicated to us through these reports. In my judgment these reports do not reveal the essential information needed in a determination of the reasonableness or unreasonableness of the rates and charges contained in the tariffs, filed by the respective market agencies. As I understand it, the report was not drawn up for that purpose. I have made no report to any superior office predicated upon these annual reports for the year 1929, or any other year to the effect that returns to the market agencies appeared to be excessive and unreasonable. There was no audit or verification made to check these reports. However, they are gone over in Washington in complete detail and if there is anything which is missing, letters are sent out. I know of no instructions issued with respect to the manner in which books, accounts, and records, should be kept. I am generally familiar with tariffs filed by market agencies at other stockyards. I have made no audit for rate making purposes at eastern markets, such as Baltimore, Lancaster, Jersey City, and Buffalo. I have not familiarized myself with the yield of the schedules of rates and charges at those markets compared with the gross value of sales and purchases. I have no knowledge of any previous proceedings in the nature of an inquiry into the [fol. 553] rates and charges of the market agencies at the Kansas City market. I did not know that there had been any cut in rates under some previous agreement. I do not

know the extent of such reduction. I would not have regarded that as a proper subject of inquiry in endeavoring to determine the facts bearing upon the reasonableness or unreasonableness of the existing rates and charges. Prior to my connection with the Department of Agriculture I never had any experience in a hearing in connection with rate making, except possibly a hearing on the question of the securities of a public utility. However, during the two and one half years which I spent with the City of St. Paul as accountant, all matters of accountancy came across my desk, that applied to rates of all classes of public utilities, street car companies, light companies, gas companies, and so forth. In my public accounting practice I have worked with an individual who specialized in rate making, but I never took charge of one of those cases myself. I stated that in 1922 I made the first statistical cost study ever undertaken. I stated that for the reason that the officers of the Northwestern Electric Equipment Company of St. Paul informed me that the Harvard School of Research and Business had prepared a pamphlet making the assertion that it was the first attempt at making a study by units of distribution cost. I would regard the undertaking which I have engaged in here as being more in the nature of distribution than in the nature of manufacturing. [fol. 554] I find no difficulty in making a study of this kind, after having gone through that study made in 1922, which is more complicated, more detailed, and in greater volume. It is more or less mechanical after you have gained experience and have the basic data. By basic data I mean the number of units and the basis for distribution of indirect costs. There are always matters coming up which require judgment, but the procedure, if you have the information, is nothing but a mechanical process of putting a report of this kind together. I know of no way, from a purely cost accounting viewpoint, of making a report which will differentiate all services to conform to the tariff as far as cost of rendering those various services are concerned. We gave that some study and I know of no way right now in which it could be done, from a purely cost accounting viewpoint, without time studies, or a study to develop a ratio for the division of an individual's time

between livestock coming in in different ways. In my present position I have made no cost study as applied to that portion of the distribution costs incident to the marketing of livestock represented by packing cost or the spread between live cost to the packer and the wholesale price of the products as sold by the packers. I have made no study of the retail costs in respect to the handling of meat products. I could not obtain from the records of our particular Bureau data showing the proportion of the dollar paid by the consumer for meat products which goes to the retail packer, market agency, stockyards company, transporta-
[fol. 555] tion company, and producer, respectively. I have made no investigation to determine whether the records of the Bureau of Agricultural Economics contain that information. I have no information as to the change in the proportion of the dollar going to each of these agencies during the period between 1913 and 1929. The reasonable cost of rendering the various services must be met by the income which will be produced. My conception of the characteristics of a cost which should be considered in connection with proper rates of compensation for such services is that of all costs which have to do with the commission business as such. That includes all costs that I could find without spending more time at it, or getting at it, than would be offset by the value of the information which we could gather. My judgment for the time being was final as to how this study was to be made. I set up in the cost study various functions, and brought into those functions the cost which I thought should be brought under them, and on that basis made a unit study. That cost study does not attempt to conform itself with the tariff and is not so drawn up that the cost of any particular services included under the tariff can be identified with that item in the tariff; I mean, accurately to the nth degree. My investigation took the species as a whole, whether selling or buying. I did not attempt to segregate those costs and relate them to the separately rated functions of selling and buying, or to selling single-ownership carlots as distinguished from
[fol. 556] plural ownership carlots, or selling mixed carlots as distinguished from straight carlots. In the first place we felt that it could not be done without making a time study of some kind or other, or establishing ratios of difficulty. In the second place, we felt that — individual thor-

oughly familiar with the livestock commission business should bring in such other evidence as would tend to show the relative difficulty of handling a straight car in comparison to mixed cars, or of handling single ownerships in comparison with plural ownerships. We tried to make as complete a cost study as was possible with a reasonable expenditure of money and time. I felt that facts bearing upon the reasonableness or the unreasonableness of the specific charges for differentiated services could be brought out by other testimony. A rate might be profitable or unprofitable, depending upon the level of the rate itself. I feel that a company ought to handle a reasonable volume of business, and that volume should be handled with a reasonable cost, and that the tariff shall be sufficiently high to return that reasonable cost, plus a reasonable return on the necessary capital for the conduct of the commission business. The rate has something to do with the margin of profit. I had very little personal knowledge of the conduct of yard operations by market agencies involved in this hearing when I formulated these instructions. I had very little knowledge of the office operations. I had never personally examined the books and records of any other [fol. 557] market agency respondents at Kansas City. I felt there was not very much difference in the methods and conditions under which the business was operated from those at other markets. The instructions were formulated upon the basis of my study of the Omaha Rate Case, and the information which was gotten by auditors in preparation for that hearing. No consideration was given at all to Form Ps-3. The reason I set up a separate cost statement for each firm in Exhibit No. 15 was that I felt that averages do not mean anything in a rate hearing of this kind, and that a study was to be made of each firm separately from which the Secretary could determine what is reasonable and fair for the various concerns. The service that each firm renders is, as far as I can see, identical. The fact that it costs one firm more to render a service than it does another does not indicate at all that if a separate tariff is made up for each one of them that any one of those tariffs is reasonable. I think efficiency is its own reward. I do not know whether all market agencies at Kansas City charge the same rates for selling livestock. I do know that the commissions for buying

livestock are different. It is my understanding that the selling rates are similar.

Averages may at some times have crept in. In these unit costs it is only the total of a column and was used for the purpose of reconciliation of all the firms in groups against the consolidated control sheet which we had established. [fol. 558] The unit cost for the various species begins on page 9 for cattle and calves. Sheets 11 and 12 have the unit costs for hogs. The average was shown for hogs but not for cattle and sheep. It was an oversight that the average was left in there. I could not give the unit cost of selling or buying since the overheads have not been allocated to either of those functions. A study was not made of the difference in the cost as between rail arrivals and livestock arriving by truck. We determined the composite cost per unit of livestock without distinguishing whether or not that unit of livestock came in by rail straight, by rail mixed, truck in, or whether it was buying straight or buying for truck out. I feel that there are differences in the cost incident to the rendition of service with respect to the different modes of arrival. This cost study does not reveal those differences.

These differences vary with the differences in volume. The cost study will not indicate whether it costs more to buy a carlot of cattle or carlot which is mixed as to species. The cost study which we have made does show whether or not all the tariff charges for one species are too high or too low for that particular species. It also can be used as a basis from which variations can be made for the establishment of a tariff, the variations being based on other testimony by individuals who are thoroughly familiar with this business.

A segregation was made between owners and non-owners [fol. 559] salaries for the purpose of determining the comparison between bargain salaries and non-bargain salaries. An owner is one who has a voice in the control of the business. I made no difference because of the organization. I appreciate that the degree of control which is exercised under various forms of business organization is different but there is only one kind of control, and that is the right of the management of the company. As to their right to withdraw income by way of salary that would be varied with the degree of control which the various individuals

have. The cost study is affected by the amount which they withdraw, either as salaries or as withdrawals. We designate the withdrawals as salaries. We had in mind that for owners the Secretary would have to determine what a reasonable salary is, and that the owners' salaries which we have in here would automatically be eliminated and there would be substituted for such salary the reasonable salary determined by the Secretary. This is a tentative study and is based upon the best information which we could get. Salary is the amount of compensation for services bargained for between one individual and another individual, or one individual and a group of individuals, or the group being represented by an agent. I feel that if the salesman who is a non-owner has no risk and no voice in the management that the owner's salary for the identical things which that non owner does should be the same and that the question of risk and management are separate [fol. 560] matters to be considered. The actual amount spent for management and the actual risk which has been reduced to actualities for the year 1929 are contained in these studies. I have eliminated bad debts from the operating cost as much as possible, having in mind that any bad debts resulting from a loan business should not be considered for the commission business. Also I was given to understand during my work here that this was strictly a cash business and that if any individual had held out on purchases or sales on credit, that was a risk which they took which should not be saddled upon the general shipper. I have in mind one concern which did quite a volume of business and which had no interest received or interest paid on its books. As to whether or not it is essential to extend credit, I do not know. I feel that if credit is extended to an individual, that individual should pay for whatever credit he gets by way of exchange or interest. As I recall it, some firms did charge to an individual exchange and collect it, if he does not complain about it, and they do not charge it to an individual who complains about it. I do believe that most companies do accept checks. I do not know of anything that compels the recipient of the service, particularly the buying service rendered by an agency, to buy at the market as distinguished from buying it direct from the owner of the livestock in the country. I understand that the buyer or seller can go any place

they want to. With reference to a regulated company which [fol. 561] can stop the service in comparison to a regulated company which may not have the power to stop the service, I would say that even though it is competitive, where apparent discrepancies exist, they should be eliminated. I do not see why they should have the right to concede to one individual, or to one group of individuals, advantages to the detriment of another individual, even though they are in the competitive field. In a field that is competitive in every possible and conceivable direction a greater regard for the convenience of all patrons collectively must be shown than is necessary in the case of the provider of the service monopolistic in character. I have found in previous rate hearings competition between one firm and another firm to get business away from each other which tends to make the cost of business getting and maintaining higher than it would be if the competition were not there. From my own experience I cannot give any illustrations of where competitive influences have affected in varying degrees rates subject to the control of a rate making body.

If the memberships in the Livestock Exchange were set up on the books, I felt that the accountant should leave them that way, and if they were not set up I felt that they should leave it that way. I wanted them to get the number of memberships so that if later on it was felt necessary to include this information in working capital at least that much information would be on hand, plus information as to the apparently market value which was to be [fol. 562] gotten from other sources. I excluded memberships, whether booked or unbooked, from consideration in my analysis of working capital. The return on that does not enter into the cost and I felt that the return on the Exchange memberships should not be allowed for rate making purposes.

The working capital is not included in the cost. It is shown as a separate statement. I believe that is in line with good cost accounting principles, that the return on investment is not a part of cost but is a part of the total return which a company should get. I have here a paper which is a part of the Government Exhibit 16-A. It is the analysis of the direct cost for the year 1929, analyzed by months. I suggest that the analysis go in as Government Exhibit 16-B.

(Whereupon, Government Exhibit No. 16-B was received in evidence.)

In commercial practice, costs would go in whether they were reasonable or not. In regulation, the reasonableness of the cost would be questioned.

I did not consider the risk factor in this cost study. The unusual risks do not enter into the unit costs. Bad debts have been eliminated from this study.

The total for all the concerns for 1929 as to bad debts is $6,930.92.

We took the last current year of operations and the individual who finally determines what is fair and reasonable [fol. 563] must determine whether the year 1929 is a fairly representative year in all respects. I had the volume records of the stockyards company for a number of years past. I gathered certain information which would enable someone to determine whether it was a fairly representative year. That information is not in the statistical cost study. I found that the fluctuation of expenses as between months, even with a heavy volume in one month in comparison with another, was not very great, and I feel that the inference can be drawn that it would not be very great as between years. Relative increases in volume effect unit costs, but total costs not so much. The cost study reduces the various factors of cost to a unit basis, and it also shows all the costs incurred by the various concerns.

On Firm No. 4 the per car income from cattle and calves was $17.88 and the cost of $14.03; hogs, income $17.12, cost $18.65; sheep income $17.57, cost $21.92 per car. These figures appear on pages 1, 3 and 5 of Exhibit 15. The inclusion of net profit or total return to owners as salaries in the cost statement was not done in the case of this particular concern. Some time after this cost study was made and before the hearing began, my attention was directed to that error and I had a distribution of the net profit made from the data which we had. The amount so distributed was $1,369.03 to Mr. Burrus, $1,528.30 to Mr. Raglan, and $1,161.65 to Mr. Storts. I do not know whether it was reasonable compensation for their services or not. That amount is not included in the schedule of salaries. I would agree that the cost should comprehend in a fair amount the sacrifice which they made to provide service to their

[fol. 564] patrons. I would not attempt to determine what the allowance should be.

I did not attempt to determine a reasonable allowance to be made by way of salary to any officer or owner. In so far as owners' salaries are concerned, there would have to be substituted therefore a fair allowance for the services which owners render which are comparable to non owners, and in addition thereto there should be allowed an amount for management and for risk. In my opinion the salaries set up should in amount be comparable from a strictly service viewpoint with the bargained salary for a similar service. There is no compensation for owners or partners allowed in the case of Firm No. 54.

I was under the impression that the local manager handled all the affairs of the company at this particular market. His time, of course, is shown in here. If the owner spent actual time in the management of this branch house, that should be given consideration. There is nothing on Schedule 2 of the blue audit of Firm No. 54 which indicates that either an owner or non owner is a general manager. The designation is made on the basis of the main part of the individual's duty and I understand that there is one of these individuals who is manager of this company. The first individual, Mr. Reid is the manager and is designated as cattle salesman. They were asked to divide the time that they spent in the different functions and, of course, if the accountant couldn't get it, we could not make any distribution. I have found in previous experiences that fre-[fol. 565] quently an owner may spend his time on cattle selling and leave the question of office management to an employed individual. There is a form of management other than office management. I think it is not possible to make a comparison between the Bethlehem Steel Company and these respondents. The type of management has nothing to do with the efficiency of the management as a general proposition. Firm No. 79 is a sole ownership. There is no salary for owners on Schedule 2 of the blue audit for that firm. The owner was acting as a cattle salesman for the entire year. The income per car for cattle and calves for Firm No. 33 was $17.56, the cost is $19.65. That would be a loss of $2.09 per car without compensating the owner. On hogs it shows a gain of 94¢ per car, and on sheep a loss of $1.59 per car. The blue audit shows a loss in operations

for this firm during the year with no allowance to the owner.

The selling price in the commercial field is whatever the traffic will bear under the circumstances. The risk feature should be considered both in the commercial field and in rate making. I lean toward the idea that they should not go into costs because they are extraordinary. In determining the per unit costs I believe the regularly occurring items should be included and anything of an extraordinary nature should be given consideration in a different way than through unit costs. My idea is embodied in Government [fol. 566] Exhibit No. 15. I have not questioned any of the costs as to whether they are reasonable or not. I could not set up a unit cost which includes these extraordinary and unusual costs, because I am not an expert in the commission business. I would not set up a mythical company as a test of efficiency. I stated that the elements of cost of service which I have used in this study have been based on the actual costs that had been incurred, without giving consideration to their reasonableness. I knew that the question of salaries was to be handled separately and I debated with myself for a considerable period of time as to whether I should put them in or take them out entirely. I repeated that these salaries of owners shown in here should not be taken as the amount of salaries to which they are rightfully entitled. I do not know what that amount is, and there should be substituted therefor the reasonable amount of service in comparison to what is paid to a bargained individual for a similar service. I stated I was going to pass on to the Secretary the question of dues on memberships, but forgot about the one that was rented. That should go into the same category. I feel that if one goes out the whole thing should go out. Gross income is used as a basis of allocation for business getting and maintaining expense, general administrative expenses, and general soliciting salaries. Sixty per cent of the total expense is allocated directly. That portion of the forty per cent which is allocated on the basis of commissions is allocated on that basis [fol. 567] because it is quite customary in business to set aside a certain percentage of gross income for advertising our business getting.

I grant that salaries are a part of the thing to be regulated. I cannot see that we are traveling around a circle.

Whether the rates are right or not right, the question to be considered is whether these rates are reasonable. I didn't question them for one minute. I put them down as I found them, with the exception of salaries. In respect to owners' salaries, where the withdrawal is considered with salaries there would be an element of distortion in the relationship as between firms. In making up the typical elements of cost I would include all ordinary costs, whether they could or could not be distributed to the various services, that are incurred for purposes of determining a unit cost statement. One could not determine the cost of the individual service unless the cost incident to the rendition thereof could be separated with reasonable accuracy. I would include as an element the accrued amounts representing the exhaustion of assets or consumption of supplies. I would include depreciation on depreciable property, labor and materials, insurance protection, except where it is strictly personal, and taxes. If the insurance is payable to the organization, then the expense could be allowed, but the amount of that policy when it becomes payable should go as a credit against that expense. I feel that the present evidence would be that it would be very difficult to allocate the payment of that policy to the various years. That would be an actuarial problem. There might be a profit [fol. 568] on that insurance policy or there might be a loss on it. There are numerous different ways in which insurance policies and insurance payments can be handled on the books. The proper way would be either to include the expense and accumulate or accrue the income which would be derived at the time the policy becomes payable, or eliminate both sides. That is the way I would handle it for rate making purposes. In case of Federal income tax, I would allow it for a corporation and not for an individual. For a corporation it is an allowable expense. For an individual it is a tax personal income.

I have never considered non-productive time in costs. I have always eliminated time and considered time as a necessary part of the selling price, but not to be taken into consideration in determining costs. I have never met with stand-by time, but I have met with non-productive time. I have set up an account to which was charged all such non-productive time, but that would not be taken into the unit costs. There is fluctuation in the volume of receipts com-

ing to this market, and with such fluctuations necessarily come peaks.

Averages mean nothing, because the shortcomings of one organization are combined with the shortcomings or good features of another organization. As long as human beings differ in their relative ability there may be differences that properly exist in the compensation they receive for the service rendered. Those differences would be accentuated [fol. 569] in a business where skill and ability are a vital factor in the results secured for the user of the service.

Firm No. 54 maintains a record showing a particular species in respect to which the individual goes into the country. In the case of that firm, business getting and maintaining expenses were allocated directly. The results are not uniform, but I would say that the study is just that much better for the reason that some costs could be allocated directly. I would not classify that as distortion. The fact that it makes variation in the per unit cost of a particular expense does not distort the picture. There is only 20% of all of the expenses of all of these firms combined that was distributed on the basis of revenue. Another 20% was distributed on the basis of account sales, owners, and drafts. Suppose an individual or a company gets 100 cars of cattle, ten cars of hogs, and five cars of sheep. It appears very possible that that firm spends its time in the ratio of 100, ten, and five, and it does not seem unlikely that the ratio would be very well maintained through these organizations.

In the case of Firm No. 72 on page six of the cost study, the income per car from handling sheep was $25.23, and the cost of handling was $44.37. That firm hired its salesmanship on a basis of splitting the commissions. When there are 54 account sales and owners, and two of those 54 units are applicable to straight-car shipments of sheep, we have [fol. 570] 52 remaining, which divided into 235 sheep gives an average of about five sheep to a shipment. It is not a distortion. I have the impression that there is train running in connection with the handling of sheep, and I allocated a portion of the yarding expense for that purpose.

As I see it, the difference in the unit costs for handling sheep as between firms 46 and 72 is due entirely to volume. The variation exists. In the case of Firm No. 72 there were numerous small shipments of sheep that may not be the case with Firm 46. Firm No. 72 hired its office facili-

ties for $900. It cost this firm considerably more to do business than it did Firm No. 46. This is one instance in which no advantage was obtained by bargaining. The average per head income of all firms is shown to be .5582¢ in respect to cattle and calves. Sheet 7 of this same exhibit shows all expenses for cattle and calves. The average per head cost is shown on page 8 to be .5341¢. That includes all expenses taken into consideration in determining the per unit cost. It does not include any interest for invested capital or for working capital. It includes salaries and withdrawals as they were set up on the books, but not in all instances. Expense for horses is charged only against cattle and calves. Membership dues are included in the determination of per unit cost. If a firm holds a membership for an employee and pays the expenses of carrying that membership, the expenses are included. These ex- [fol. 571] penses do not include anything for bad debts or for risks. The term "all expenses" should not be misleading to an accountant. It can be very readily determined just exactly what is comprehended by the term "all expenses." One must take the entire report, along with my explanations, in order to understand accurately this expression "all expenses." The difference between the total average cost and the total average income per head of cattle and calves is .0241 or, in other words, $2.41 per head. The per head expense is 95.69% of the per head income. For the entire group of firms that is an operating ratio of 95.69 to 100. The 4.3% would shrink in amount as the other expenses were included. The question of business getting and maintaining would have to be considered as to whether or not it is too high or too low, and adjustments made accordingly. Consideration should also be given to the expenses entailed in connection with the necessity of defending the rights of market agencies in investigations into their rates.

Redirect examination:

The figure .5341 on page 8 of Government Exhibit No. 15 is a straight average. It is the total number of head for the market divided into the total expenses. The same is true of the figure .5582 on page 54. On page 7 of the Government Exhibit No. 15 the figure at the head of the right hand column is .4116. That is the per head cost, and all

expenses are included in this statement in the determination [fol. 572] of the per unit cost. The first figure in the right hand column on page 53, which is .5247, is the per head income for firm No. 4 for all commissions received from cattle and calves. The difference between these two figures is .1131, which is the profit per head in the handling of cattle and calves by Firm No. 4. This profit is in no way reduced or increased by the fact that the difference between the figure .5341 on page 8 and the figure .5582 on page 54 is not as much as 11¢. The first break down on expenses is under the heading of "Expenses" on pages 9 and 10. It is there broken down into four salary divisions and into four expense divisions other than salary. Each one of these columns is later on again broken down. Administrative and general expenses are shown on pages 35 and 36. The allocation of these expenses to the various species is shown on pages 49 and 50.

The break down on salaries is shown on pages 23 to 28, inclusive. On page 23 and 24 appear the salaries of owners for selling and buying. That column includes the drawing accounts and the splitting of profits with respect to owners, which I have already described. I did not attempt to pass upon the reasonableness of these amounts as owners' salaries. If the Secretary should find that the items of expense, the total of which is represented at the bottom of the third column on page 10, are unreasonable and should substitute figures as reasonable the total of which is [fol. 573] represented, the figure .5341 on page 8 would be changed. If Firm No. 72 had employed office employees rather than contracting their office work, I do not know whether they would have saved money by that process. I know of no better methods of allocation than those which I have used. I have been thinking over the question of the allocation of expenses as between the different modes of receipt of the same species, but I cannot think of any way in which it can be done from an accounting viewpoint. There is a reason for not segregating buying expenses from selling expenses. Certain phases of the expenses can be allocated to buying and to selling. Salaries in certain instances can be allocated directly, but I did not know how to allocate the overhead.

It is not the custom of accounts to consider as capital in a particular business all possessions of value which the partners in that business may own.

Continuation of redirect examination:

I believe that hazards and uni-surable risks should be considered and should be included in the rates. If they are included in the rates that part of this tariff which is over and above the reasonable expenses and which is put in there for the particular purpose of taking care of those risks will produce cash for that particular purpose. I do not think that firms need to set up and maintain as a part of their capital investment non productive cash reserves to cover hazards and uninsurable risks.

[fol. 574] When I stated that the item of bad debts should be considered, I had in mind that such an item is out of the ordinary and may be very big in any one year. To include it for that year would make that unit cost vary perceptibly for an item which is out of the ordinary. I mean that it should be given consideration and passed on by the Secretary. I cannot see how an increase in the commission rates would necessarily increase the cost or expense of conducting the business. The salaries of employees in the commission business are almost generally on a time basis. The salaries or split commissions are on a unit basis. We used the account sale owner method of allocation of office expenses because those factors took up most of the time of the people in the office.

Recross-examination:

The averages on pages 7 and 8 of Government Exhibit No. 15 take the total number of head of each species for all firms and divide that into the total expenses. What I have in mind by weighted average is to give a greater percentage of weight to one species in order to bring it on an equality with other species. I use the term "straight average" where there are a number of firms with a total expense and with the number of head handled by the individual firms. Taking the total expense and total head will give a straight average or a composite average. The per head cost of cattle and calves for the last firm shown on page eight is $1.0856. The income is .6677¢. That firm [fol. 575] operated for about eight months during the year. In case of Firm 85 the cost per head is .6790. The income per head is .5483. That firm operated during the entire year. The owners withdrew $2,425.74 and the business

showed a loss for the year of $1,869.25. I do not know whether this firm is still in business. The total expense of Firm No. 4 and the total head of the same firm being included in the totals of all the firms necessarily would affect the computation of the composite per head cost. For Firm No. 6 the cost per head is .6982, and the income per head is .5388. The cost for Firm No. 7 was .4950 per head and the income was .5228. For Firm No. 8 the cost was .6741 and the income was .5679. For Firm No. 10 the cost was .4811 and the income .5205. The regular fulltime employees of Firm No. 7 are apparently engaged entirely in the selling and buying of hogs, and the company pays for selling services for cattle, calves and sheep. In the case of Firm No. 10, there is included directors' fees in the amount of $1,322.96. I do not know whether the directors are owners of the business, or what additional service, if any, was rendered by the owners. According to the cost study this firm made a little less than 4¢ per head profit on cattle and calves. I made no attempt to determine, and feel that it is not within my province, to state which firms are typical. The income per head on cattle and calves are firm No. 10 is $.5205. For Firm No. 54 the cost is $.5025, and the income is $.5510 per head on cattle and calves. There is nothing included in the expenses of this [fol. 576] firm for salaries of owners. I said that as far as accountants are concerned, it is not their province to make valuations of assets. Mr. Henrici made a valuation of the fixed assets of the Stockyards Company in connection with a stockyard rate hearing, but the accountants did not do that. There is a considerable difference between rate making for stockyards and rate making for commission men. In stockyards investigations value plays a most important part, and in this study for commission men the matter of furniture and fixtures is a minor factor. They are both considered.

I feel that I have not sufficient practical knowledge of this business to determine whether the presence of additional buyers on the market is of value to the market. In a competitive field the more profitable a business becomes the more likely competition is to increase. It is also true that the more profitable a business is in a competitive field, the greater is the likelihood of an increase in business getting and maintenance as compared with other overhead costs.

(Whereupon the Government Exhibit No. 15 was received in evidence.).

HOWARD D. DOZIER, a witness called by the Government, after being duly sworn, testified as follows:

I am economist in the Bureau of Animal Industry, Department of Agriculture. I devote the most of my time to keeping up with financial matters, particularly invest- [fol. 577] ments and general economic conditions in the study of such subjects as seem to be pertinent to the work of the Packers and Stockyards Division. The purpose is to collect information on general economic conditions which will be useful in rate cases.

I am an economist by profession, and am a graduate of Vanderbilt University and Yale University. I was formerly head of the School of Commerce in the University of Georgia, and later was professor of Economics at Dartmouth College. I have been in my present situation for the past six years. I have testified in stockyard rate cases at Detroit, Buffalo, St. Paul, Nashville, Denver, St. Joseph, Chicago and Kansas City, and in commission rate cases at Sioux City. In the summer of 1927, I made a very exhaustive study of the trade territory at ten of the leading stockyards. This study related to railroad receipts and the information was obtained from the waybills kept in the offices of the stockyards companies. I have made a compilation in the form of a report of the result of my study at the Kansas City Stockyards, which has been marked for identification as Government Exhibit No. 22. In this report there are three maps. One of them is found at page one, another at page 21, and a third at page 33. The information was classified into four groups, showing the relative drawing power of the Kansas City Stockyards in its trade territory. On page one the black area represents territory from which Kansas City received between 75% and 100% [fol. 578] of the total number of cattle and calves marketed from that area at all of the ten markets, including of course, Kansas City. On pages two and three information is set up for ten states which ship cattle into Kansas City, and each state is divided into the areas designated by the legend on page one. The black area in the State

of Kansas sent to Kansas City 854,205 cattle and calves, and to all ten markets 938,921 head of cattle and calves. The number of head of cattle received at Kansas City from this territory represents 36.2% of the total rail receipts of cattle and calves at Kansas City. Similar classifications were made for the territory from which 50% to 75% of the livestock was shipped to the Kansas City market, and also from the 25% to 50% territory, and less than 25% territory. On page 5 there is the beginning of an analysis of states by counties. The same explanation which I made in respect to states and territories applies on page 5. Pages 19 and 20 refer to receipts from Arizona and Idaho. The number going to these ten markets could have been wiped out of the picture without changing anything much. The same explanation applies to hogs, beginning on page 20, and on sheep beginning on page 33. The figures that I am working on are the figures with respect to these ten markets, and although there is a 50% to 75% area indicated in the State of California, it is quite likely that a good many more cattle went to some other market from that area in California than went to all these ten markets combined. [fol. 579] My study did not cover the stockyards at Fort Worth or Oklahoma City. It is quite likely that if Fort Worth had been included in this study, and the basic figures had been the cattle and calves marketed at eleven markets, some of this colored area which is attributable to Kansas City would have been another type of market area surrounding Fort Worth. There had to be a cut-off somewhere, and we would have not gotten through if we had undertaken to get the information for all markets. If I had taken 25 markets, it would have given a more nearly complete picture of the few markets in the center of the territory. There is a territory on the outskirts which does not represent the facts. (Government Exhibit No. 23-A, B, and C; 24-A B, and C; 25-A, B, and C, the same being the maps showing trade territory for the livestock markets at Chicago, Omaha, and National Stockyards, respectively, were marked for identification.)

The document which has been marked for identification as Government Exhibit No. 26 is a photostat copy of a table made up from the information for all ten markets, such as is included in Government Exhibit No. 22. This

exhibit shows the relative drawing power of each of the ten markets in its respective trade territory. The information is as of the year 1927, covering rail receipts only. I don't think it would be practicable to continue a study of this kind from year to year because of its expense, and because it would require some Government representative [fol. 580] to be in the stockyard offices almost constantly. Capital plays a very important part in a utility like a stockyard company, while in a commission business capital plays a great deal less important part. Some physical facilities are necessary but it is not the major service. If something should happen to a commission firm, the risks would run largely to the persons engaged in the business rather than the physical property which they use. In stockyard rate cases I have always tried to encompass all risks in the rate of return. In the case of a stockyard company, where the risk adheres almost entirely to the capital, a constant rate of return applied against that varying valuation that the rate maker may put upon the property will bring in a sufficient number of dollars to meet the entire risk, regardless of what the value is. In the case of a commission firm where only a part of the risk adheres to the capital, you can't tell what rate of return you ought to apply against a fraction of the risk until you know what percent of the risk attaches to the capital. In referring to the interst rate as being what the market agency would have to pay in order to get money, that includes an element of risk but is not all of the risk that is peculiar to this type of business. In a general way it is the risk that would be found in any loan.

Cross-examination:

I know the direct buying here has had some influence on the hog receipts at the Kansas City market. The figures which occur in Government Exhibit No. 22 include those [fol. 581] direct shipments which pass through the machinery of the stockyards and refers to the direct buying of Swift & Company. My figures do not include the directs to other packers located here.

It is my understanding that the direct buying here at Kansas City is as large, if not larger, than at any other primary terminal market.

It is evident that in 1920 about one-fifth of the total in-

spected slaughter is represented by direct movement. In 1929 the figure is approximately two-thirds. If the volume of hogs in the territory does not increase and the direct movement to packers does increase to this market, then necessarily the volume for the market agencies will decline.

I think competitive influences have to be taken into consideration in connection with the establishment of a rate. Such influences may affect in different degrees those classifications of service that are separately rated.

If you shift the fixed cost incident to the selling of hogs over on to the selling of cattle, necessarily the cost per unit of the remaining volume would increase.

I think there is some going value in the commission business that ought to be recognized, but as to how much or how to get at it, I am at a loss to tell you.

I think of good will as the habit which people have of going back to the same place of doing business. Good [fol. 582] will in the commission business is perishable unless it is cultivated. It is being cultivated all the time by the expense for advertising and the meeting of patrons and things of that sort. Good will, it seems to me, is reflected somewhere in the operating expense.

If the risk is an insurable risk, I think rates ought to be high enough to enable everybody to provide insurance to cover it.

If some market agency would not and does not insure, and then suffers a loss, he cannot set up that loss as being anybody's fault but his own.

The judgment of the respondents down there is, as I understand it, that it would cost more to insure against the risk of public liability than the probable loss. If I were called upon to make the rates, I would have that in the back of my mind as one of the things that is likely to happen. I do not know whether I could evaluate it in dollars and cents, but I would realize that it was there and try to give it what weight I thought it ought to have. What the insurance companies charge for writing such insurance is of value to the rate maker. I do not mean that the rate maker would have to translate that literally into the rates. It would be one of the factors which he would have under consideration when he made his rates.

The rate maker should also recognize the fact, if such

situation exists, that insurance companies charge higher [fol. 583] premiums for accident and health insurance on those individuals engaged in business as market agencies than in the ordinary occupation classed as non-hazardous.

If you are going to have a cost study and use that as a point of departure for establishing reasonable rates, the more complete and accurate a cost study is the better. I realize that mathematical exactitude is not always ascertainable. An owner cattle salesman is entitled to cover into the per car cost and carry that into the rates, an amount which is as large and no larger than he can hire it done for as well as he can do it. That would not preclude the owner from having an additional return, due to the fact that he was an owner and manager of the business. I think uniform rates are better for all concerned. I would not consider an average made up for all of the firms as of any weight, because that merely represents their own experience and the result under the existing rate. If you take that average and apply that to its business, you get back to the exact rate with which it started. If you assume that all of these agencies are getting a reasonable volume of business and handling it in a reasonably efficient manner, and that there are no un-sual experiences, or no unusual costs among any of them, it does not make any difference whether you average those things which you are going to take into consideration or whether you arrive at them by just inspection. If I found a firm spending a dollar a car for some insignificant service, or if I found [fol. 584] that its expenses were running $25 per car for some particular item, I would go back into all of the records that I could find in order to explain that un-sual conditions. If that is an unusual condition, necessarily I would not give it a great deal of weight. In the case of a new firm with very low volume of business, I would not give the experience of that firm great weight, for the reason that you could not penalize all the shippers to all of the other agencies down there with a schedule of rates high enough to make this sub marginal firm a paying and prosperous firm. If a firm wants to go into business and gets a very small volume they take that risk, and they expect to get volume enough to make them prosperous. They may be mistaken and the mistake is theirs. I would not take the experience of the most prosperous firm on the market, and the one

with the biggest volume, as solely ruling, for the reason that a schedule of rates under which that firm might live would be so low as to impose a hardship and make it impossible for many less efficient firms to operate. If I found a firm with a very low unit cost and it- stock in a class by itself, I would not let the experience of that firm influence me greatly. If for that identical item another firm is incurring three or four times as much expense, I would not let the experience of that firm influence me greatly. I would take the experience of an intermediate group of firms. Suppose we find a firm with a cost for yarding salary of $2.00 a car, and for another firm it is $10.00 a car. Immediately [fol. 585] I would go to the audits to find out an explanation of that car for that particular service. I would decide whether the experience as to that particular firm should guide, or what weight it should have in my final determination. I would analyze every firm in that fashion, and then when I was through I would go back and rule out those cases where the situation was unusual and isolated. When I was through, and I had eliminated all those unusual weights, there would be left a very large number of firms where the cost would be around $2.00 a car. From that point it is a question of judgment. I would regard as an un-sual situation, a case where a firm had gone out of business, or its volume was extremely low. When you work through the accounts of all these firms, and have made a comparison, your mind will be pretty well made up as to what is a reasonable expense for that particular service. To me a cost study such as Mr. Roberts will make, and such as Mr. Bachmann has made, gives certain definite facts as nearly as can be ascertained. From that point on, rate making, as I see it, is a matter of exercising the best judgment in light of all the facts that are of record. The theory of rate making which I would follow would be to ignore those items of expense in the case of any or all firms which were clearly unreasonable. The same firm might have other costs which were perfectly reasonable in the light of the experience of all the other firms. It is not a question of the total experience of one firm as compared with the total experience of *one firm as compared* [fol. 586] *with the total experience of* another firm, it is the comparison of the elements of cost or of the items of cost which would indicate the reasonable cost of operation.

It would be of some help to have the aggregate cost of all the individual services collectively. I would rather have it broken down a little more finely. I would rather see the experience of each firm with respect to each item. This schedule is fairly complex, and it seems to me that it would be very difficult for any cost accountant to test the tariff by cost, because some of those items are very small. It may be possible to test the reasonableness of your schedule completely by a cost study. The hauling of one bale of cotton a mile by a railroad is the same as hauling it another mile. There is variation in the character of service rendered in the case of the same class of animals. It might be economy for a shipper to have his cattle sold by one salesman, whereas it might be uneconomical to let a less efficient salesman sell it. The rate charged by everybody may induce shippers to come to this market, or it may drive them away from this market. When the livestock is brought into the yard, everybody charges the same thing for doing the same class of service, and the shipper must choose which one of the agencies he will use. Since rates are all the same, the rate factor in getting business is annihilated. The quality of service and the value of the service to the shipper is an element to take into consideration. No man can be 100% efficient all the time, and in this particular [fol. 587] industry the conditions vary from day to day, which will make it impossible, or very difficult for a man to render 100% service all the time. There is a small ratio between the value of the livestock sold and the commission charged. The raising of railroad rates by a flat 100% would kill a very great deal of railroad traffic. The situation with railroad traffic is not analogous to the commission business. Purely from the standpoint of the value of the service to the shipper of the livestock, it might be possible that you could double your rates and kill off a comparatively small amount of your business. You might lower the rate and get no added volume as a result of it. It is my impression that the percentage which the commissions bear to the proceeds of sale of livestock have been fairly uniform.

(Whereupon, Government counsel handed to Respondent's counsel, certified copies of the commission tariffs of the Baltimore Livestock Exchange, Cincinnati Livestock Exchange, Pittsburgh Livestock Exchange, Lan-

caster Livestock Exchange, and the New York and New Jersey Livestock Exchange.)

Respondents' Exhibits 19-A to E

Whereupon Respondents' Exhibits 19-a to 19-e, the same being copies of the tariffs of commission rates heretofore handed to respondents' counsel by counsel for the Government, received in evidence.

Chicago shows a wider area from which cattle are re-
[fol. 588] ceived than Kansas City. The average distance of hogs to Kansas City is about 183.5 miles; about 100 miles for St. Joseph and Sioux City. The figures which I have included in this study include all directs which pass through the stockyards and are recorded by the stockyards company, other than that the direct shipments to packers here are not included. The Exhibits do not include any arrivals conveyed to the market by truck or any other mode of transportation except rail shipments. It is my understanding that the trucking business is on the increase. Good roads have been an important factor in accounting for this increases. My observation for the last five or six years is that as good roads have radiated from these markets, the distance from which drive-in livestock comes to the various markets has increased, and that there is an overlapping in some cases which increases as the good roads increase. There is an area I think between Sioux City and Omaha where there is a considerable overlapping. I would suppose that there is competition for truck-in business between St. Joseph and Kansas City. It is natural to suppose that from the immediate vicinity Kansas City gets more cattle from the county itself than any other market. The reason the county in which Kansas City is located is not included in the 75% area is because of the large number going to Chicago from the Kansas City market.

Kansas City is more competitive with respect to hogs and sheep than the National Stock Yards at East St.
[fol. 589] Louis. It is about the same with respect to cattle. Some markets are more advantageously situated than Kansas City and some of them less. I think competition reflects itself in operating expenses to some extent. Generally speaking depreciation is a legitimate operating expense. Ordinarily one's earning capacity is supposed to

be smaller when he is young than it is when he reaches his peak, and after he reaches a peak there is a decline in his capacity. The earnings which one accumulates may or may not follow that same trend. It is my impression that in the consideration of these questions we are supposing that every man down there is rendering A-1 service to the shipper. A test period has been selected and analyzed in minute detail. General information as to the past, and as much of it as possible, and as many facts as possible which will indicate what is going to happen in the future should be put into the record. Any experience you draw from the test period must be tempered by an exercise of judgment. Volume of business is an item which must be considered in connection with the determination of rates. The experience of each firm in my judgment should be analyzed, passed upon and evaluated, and the reasonableness of costs passed upon. If you bring an unreasonable cost into the average of all firms and all the expenses of all the firms in the same way you will aggregate along with every reasonable item every unreasonable item that is incurred on the market. When you take that weighted figure and work back into rate you will get exactly the [fol. 590] same rate, and you have done nothing toward the exercise of judgment as to the reasonableness of expenses. It is fruitless to count all unreasonable expenditures into your aggregate and then average it. If you are the most successful firm on the market, I would not feel right in covering your experience into the schedule of rates to be applied by everybody down there because to do so would reduce the chargeable rate under which the younger firm could not live. I have made no study of the rates at the markets shown in Respondents' Exhibit 19-A to 19-E. It appears to me from a perusal of the schedules that the schedules of charges as shown in Respondents' Exhibit 19-A to 19-E are higher than those contained in Tariff No. 2 of the Kansas City Livestock Exchange. My answer refers to the appearance of the schedule as printed and does not have reference to the revenue produced. If you applied the Baltimore schedule to the Kansas City business it would produce in my judgment considerably more revenue than the tariff now in force at Kansas City.

Redirect examination:

I did a great deal of work on the record in the Omaha Commission Rate Case. I am familiar with the order in that case and was present at the first hearing before the three-judge District Court at Omaha. I was present at the hearing before the special master and assisted in the preparation of material for the use of the Government counsel in the presentation of the case to the three judge [fol. 591] District Court. The material was appended to the brief of Government counsel. I heard the argument in the Supreme Court of the United States in regard to the validity of the Secretary's order in that case. I agreed with the theories and principles expressed in the order of the Secretary of Agriculture. I think the principles laid down in that case are correct principles for commission rate making. My understanding of the principle laid down in the Omaha case was that a schedule of reasonable rates for market agencies operating on the market should be such as to pay all reasonable expenses and a reasonable profit to all firms receiving a reasonable volume of business and handling it in a reasonably efficient manner. So far as the facts in this record go, nothing has yet been developed which would cause me to change my mind as to the soundness of that principle of commission rate making. I do not know of any facts developed in the record in this proceeding which should vary the application of that principle.

I do not know whether respondents' receipts would increase if direct marketing were eliminated. In my opinion there would be an immediate increase in the volume of hogs handled by the firms now operating on the market, and there would be a tendency because of the increased volume for additional firms to appear on the market.

When I said that the commission business is more competitive than the stockyard business, I had in mind the [fol. 592] conditions under which the commission business is conducted which bring about a shifting into the business and out of the business. The commission business is not as continuous a business as the stockyards business.

The stockyard business requires a big outlay of capital and is a more stable business than the commission busi-

ness. The commission men strive more with each other to get business from each other than the stockyard strives with its competitive yards to get business from them. It manifests itself in business getting.

In referring to averages on my cross examination, I was considering the average for the market as a whole. When I spoke of an average firm, I meant a normal firm, and by that I mean a firm which shows no abnormally high or abnormally low unit expenses. When I spoke of the present tariff of commission rates as being fairly complex it had no connection whatever with fair and reasonable.

Generally speaking, the effort to get business will manifest itself in advertising effort and expense where rates are uniform. Whereas, if rates were not fixed and uniform, this effort could manifest itself in a reduction of rates. That applies particularly to the so-called old line firms.

I do not think the commission rates are based on the principle of what the traffic will bear. I think a commission rate could be so high as to be unreasonable and [fol. 593] still not represent more than traffic will bear. The character of the business is such that if rates were doubled or increased very greatly they would not divert a large amount of livestock from the market.

The average distance moved by hogs coming to the Kansas City market by rail in 1927 was 183 1/2 miles. I am under the impression that the maximum drive in distance is about 100 miles.

If truck in hogs had been included, the map on page 21 of Government Exhibit 22 would have shown a greater concentration of trade territory close to the market.

Recross-examination:

I agree with the statement appearing on page nine in the Arbitrators' Award which reads as follows: "In reaching a conclusion as to what in their judgment will be a fair charge for the producer to pay and a fair compensation to the market agencies for the services rendered, the Arbitrators have in mind that it is not within their province to pass on the question of whether a firm has the right to act as a market agency. But they have approached it from the standpoint that the compensation should be reasonably remunerative to those efficiently

functioning as market agencies. It would not be to the advantage of the livestock producer to bring about arbitrarily such conditions as to cause necessary talent to seek a field for its services other than with the livestock market agency. It appears that the producer and shipper should be the best judges as to the quality of service fur- [fol. 594] nished them by the several market agencies and as to whether the service is satisfactory."

The judgment on the part of the shipper as to quality of service, in part at least, will be expressed in his action in sending his livestock to a particular agency.

As I remember it, the record shows that about 25 firms on this market handle about 75% of the livestock coming to the market. The remaining 25% distribute their livestock to the smaller firms. A small firm may be just as efficiently managed as a larger firm. I mean that a small firm, assuming that the business is large enough to justify its existence, may sell just as well, may keep its expenses just as low as a much larger firm. Our experience has been that the extremely large firms seem to spend a great deal of money on holding that large volume of business.

The element of value of service to the shipper is an element which I think has a bearing upon the rates that are to be determined. It is conceivable that one species of livestock, hogs, on this market in respect to their handling by market agencies would be exposed to a higher degree of competition than other species, and that some consideration of that might have to be given in the allocation of costs and in determining the rates. If it does exist and can be shown to exist, then it is one of the factors that the rate maker ought to have in mind. A change in freight rates might divert traffic.

[fol. 595] If there should be for some reason a sudden cessation of direct buying, some portion of the livestock which is now moving direct would, in my judgment, come through the regular market channels and be handled by the market agencies now in operation. That would increase the revenues by the amount of return applicable to that increased volume, but it would not in my judgment increase the expenses in the same proportion. That would naturally increase the profits of those firms that are now on the market and those increased profits might tend to bring additional firms upon the market, which in turn

would have a tendency to reduce the volume of the firms that were formerly on the market, and thus reduce somewhat the profits. I think rates should provide some surplus in the form of a reasonable profit. I doubt whether the situation with respect to capital requirements in the commission business is the same as that in connection with railroad and public utilities in connection with which a provision for a surplus is made. The commission business is so largely a personal service. I would provide for a surplus in some other way than a return on capital. Perhaps I would make an allowance for profits. All of the market agencies are centered here within one stockyard. They are drawing their receipts from the same territory and they are operating under much the same conditions. This being the case you can make a comparison of the unit costs incurred by one firm with the unit costs incurred by another. Railroads operate over wide sections of the country and I think the conditions under [fol. 596] which the railroads operate would make it more difficult to compare unit costs of one railroad with the unit costs of another, than is the case in market agencies. In this work there seems to be a parallel with respect to so-called business getting and maintaining and the extent of the territory, and that parallel would lead me to suspect the opposite of what your question assumes that as the territory becomes more extensive the cost of business getting and maintaining becomes greater. I have no facts which would enable me to answer that question as to business generally other than the commission business.

I know in a general way the work of the Bureau of Railway Economics and I have known some of the people connected with it for fifteen years. Its reputation is good. I have every reason to believe that they do careful and accurate work. I have seen Bulletin No. 38 which has been marked for identification as Respondents' Exhibit No. 20. I know nothing of the details of the information. I know in a general way how the information is collected and compiled. Whereupon Respondents' Exhibit No. 20, the same being the Bulletin heretofore identified, was received in evidence.

I note on Page 8 of this exhibit that in 1929 at Kansas City, for instance, the price paid by the purchaser for cattle and calves was $11.22 per cwt. of which the freight charges as defined in the report amounted to 23¢ per cwt.,

[fol. 597] and that the other costs of distribution, which include the stockyard charges for yardage, feed, etc., and the commission charges of the market agencies, amounted to 15¢ per cwt. For 1929 this total distribution of costs was 1-3/10% of the gross proceeds of sale. The same figure for 1924 at Kansas City appears to be 2-4/10%. The price paid by the purchaser at Omaha was $11.96 per cwt. The freight charges were 39¢ per cwt. and the other costs of distribution was 16¢ per cwt. The price paid by the purchaser at Baltimore in 1929 for cattle and calves was $12.11 per cwt. The freight charges amounted to 32¢ per cwt. and the other costs of distribution amounted to 21¢ per cwt. The cost of distribution at St. Louis is 20¢ per cwt. as compared with 15¢ per cwt. at Kansas City. The cost of distribution other than for transportation as applicable to hogs was 25¢ per cwt. at Kansas City and 40¢ per cwt. at Baltimore. Expressed as a percentage of the price paid by the purchaser at the respective markets, the cost was 2 1/2% at Kansas City and 3-6/10% at Baltimore. The same cost was 22¢ per cwt. at Omaha.

Redirect examination:

I testified that I would look out for the risk which the surplus was intended to meet in the profit rather than in the rate of return. Profit is compensation for risk carrying, and if you have allowed for all the risks in profit, you have allowed for the accumulation of a surplus. The surplus is a function of what you allow in the profit. Profit [fol. 598] is ordinarily defined as payment for management and for risks. When you have allowed all expenses and allowed the owners reasonable payment for management and you have allowed for all the risk there is of the business, then you have allowed a profit which when covered into the rates will provide the necessary surplus. Under reasonable rates you don't fix income, but you determine a reasonable unit cost which is translated into rates. Under those rates every man is left free to make his income dependent upon the volume of his business. There is no fixing of income here and guaranteeing of income or penalizing of income that is earned under reasonable rates. There are certain risks which the Secretary can see in this industry and some of them are so

definite that he can allow an operating expense to cover them. The Secretary will have to estimate that as best he can. Then there are certain risks which may happen once in five years. They are here in the industry and the rate must cover them. It goes into the rates through the profit that is allowed, and the surplus accumulations from the rates to meet the cost incident to the risk when it occurs.

Recross-examination:

When I refer to reasonable allowances for all of these unit costs, I mean reasonableness and good judgment wherever it can be exercised, with just as full knowledge as it is possible to ascertain. I have said that the rates ought to be high enough to cover the expenses of opera- [fol. 599] tion, pay a profit, and in that profit I include the risk which is natural to the business in the light of all the circumstances. Whereupon the witness was excused.

Government Exhibits Nos. 22, 23-A, 23-B and 23-C, 24-A, 24-B and 24-C, 25-A, 25-B, and 25-C, and 26 were received in evidence.

Laurence G. Trickett, a witness heretofore called by the Government, resumed the stand and testified as follows:

Government Exhibit 13-A shows the car receipts for the year 1929 of the commission, firms, packers and miseellaneous receipts. This statement shows the cars received for the various commission firms and others for the various species of cattle, hogs and sheep. Government Exhibit 13-B shows the car receipts of cattle for the commission firms, packers and others by months for the year 1929. Government Exhibit 13-C shows the same information for hogs, and 13-D shows it for sheep. These sheets show the receipts by rail only. They do not include the drive-in business. Whereupon Government Exhibits 13-A to D were received in evidence.

The Kansas City Stockyards Company is preparing an annual report of its operations for the year 1930. That

report has been printed and will be delivered to us today. It was prepared under my direction and in the same way as the previous reports concerning which I have testified in this hearing.

[fol. 600] Recross-examination:

The percentage of the total receipts of drive-in compared with rail receipts has been increasing. The business of the Harry Kennaley Commission Company consists largely of drive-ins. That may be true of other firms.

For the year 1929 yardage was four tenths of one per cent and the yardage and feed amounted to 88/100 of one per cent of the gross value of the livestock handled. The yardage charges at St. Louis and St. Joseph are the same as at Kansas City, but there is some variation in the feed charges. I would consider it highly impracticable for the stockyard company to have all livestock consigned to it to be sold by its employees. It would destroy the bases for the selling and buying prices of livestock, creating dissatisfaction among livestock producers, and eliminate competition. The livestock markets have been developed over a period of years and the natural method of handling the business was that the stockyards were not to sell or buy livestock. A great sum of money has been spent at practically all stockyards in developing a selling and buying power for the primary purpose of creating competition, which, of course, means a demand which is the fundamental factor in price. I do not believe that the stockyard company could maintain the high degree of efficiency among its employees in the selling of livestock which exists at the present time on the market.

Redirect examination:

I do not recall any other firm than the Harry Kennaley [fol. 601] Commission Company which devotes itself largely to the drive-in business.

The fluctuation in receipts from counties from one year to another are due to competitive factors as well as climatic conditions. It might be due to change of personnel of the concerns doing business at our market, the quantity of livestock produced, or changes in the freight rates or services. The primary factor which determines the market to which livestock goes in service, which naturally results in the

market price of livestock. I think the freight rate service and the time of getting into the market and the freight rates are also a factor. It is centralizing the livestock on the open market both in selling and buying that makes the market price. The more agencies there are on the market the more they would be out competing for business in the territory, advertising and endeavoring to bring more business to the market, which would bring more actual receipts to the market. It is not my opinion that it would be helpful to the market to have a growing number of selling agencies, assuming that the volume coming to the market remained the same. It is the desire of the stockyard company to attract as much business as possible and it is my opinion that the commission firms on the market are important in attracting business.

Recross-examination:

My attention has been brought to instances where livestock under billing to this market has been sold ahead of [fol. 602] the market at the Morris and Prospect feed yards. Those instances relate to cattle as well as other species of livestock. I do not know of any other market where the feed yards are so close to the terminal, open, competitive, public, livestock market. In 1920, Armour & Company was the only packer that had well developed stockyard facilities for receiving direct consignments. These were the Mistletoe private stockyards. Since that time, Wilson and Cudahy have provided facilities for handling directs. That has been within the last two or three years.

W. T. ANGLE, a witness previously called for the Government resumed the stand and testified as follows:

Recross-examination:

(Government Exhibit 8-I, the same being the annual report of the Kansas City Stockyards Company for 1930 was received in evidence.)

I think it is true that every stockman who purchases livestock on a market should have the services of a good stocker and feeder buyer. The ave[illegible]e countryman coming in is

not informed as to the cost or the money it takes to buy a particular kind of cattle.

I have noticed and observed the fact that there was a decline in receipts, particularly in cattle, for the last several years, and in hogs for two or possibly three years. It is my remembrance that along around 1925 or 1926 the [fol. 603] Kansas City market had its peak of receipts in cattle, and in hogs around 1927 or 1928.

Redirect examination:

I think there are many different factors and influences, some of which pull upward and some downward in respect to the receipts of livestock at the Kansas City market. The peak which was reached in 1925 was related to the World War production. I would say that the greatest influence, that I have observed in studying livestock receipts, in making light or heavy receipts has been the cyclic factor. From the study which I have made, there has been a tendency on the part of a number of market agencies to decline during the last few years, and one would naturally be inclined to think that it was associated with the decrease in receipts of livestock. From the information that I have on that subject, there is a tendency when there is a large flow of livestock through the yeards for a period of years for the number of agencies to increase.

I feel sure that each of the cattle salesmen in our firm do not sell the same numbers of cars. I feel sure that Mr. Ecton, our head cattle salesman, sold more cars than the average indicated in the audit. In my opinion the larger number of animals a salesman has to sell in his alley, the time he has to devote to each car or to each individual head is reduced. In further explanation, I might say that he usually has more of the buyers' time in his alley, and he [fol. 604] doesn't have to wait so much during the trading hours for the buyers if he has more of the animals in his alley that day for selling. I think that there is no question that if he prorated the time that he spent on each animal or on each carload on the days when he has large receipts and the days when he has light receipts, he has actually used less time in selling a large number of animals per car than he would if he had only a small supply in his alley.

Mr. Myers in our firm gives his time primarily to the selling of western cattle. He buys considerable cattle and makes country trips for inspection purposes.

To a certain extent we are specializing in one person doing the bulk of the buying in the heifer and cow division, and to a certain extent specializing in having one buyer buy the common to medium grades of cattle. Other buyers are specializing in the good and choice grades of stockers. All our cattle salesmen do some buying. Mr. Russell sells butcher cattle. Mr. Kilgore gives his time to the selling of stocker cattle, including stock calves and stock yearlings, and to a certain extent two year olds and fleshy feeders. He does some buying. He also does some yarding. In 1929 probably over half of his time was given to yarding activities rather than to selling. Mr. Scott gives his time to the buying department, buying cattle. Mr. Okeson gives his time to the buying and does some field work. Mr. Green has charge of the hog department and sells the slaughter [fol. 605] hogs. By far the bulk of the hogs are included in his alley that he sells. Mr. Green sells normally about 65 to 75 per cent of our hogs. Mr. Trautman sells the balance of our hogs and does yearding work. He also buys our stocker pigs. Mr. O'Connel does our buying and selling of sheep.

I believe the competition in business getting and maintaining efforts among the market agencies increase the expenditures of each market agency. During the year 1929, considerable progress was made in the enactment of the Federal Marketing Act and which has resulted in our organization being a part of that marketing machinery, and we thought it was no more than good to apprise the livestock men in this territory of the position we had in the marketing industry. To that extent we increased the expenses in our contact department so much. That was to a certain extent a special program.

The cattle coming to this market are largely white-faced cattle and are not as docile as the short horn breed of cattle.

Our organization is not primarily operated for the purpose of making a profit. In order for a person to become a member of our Association, it also is necessary for him to become a member of the National Livestock Marketing Association. The livestock loans are practically confined to our membership.

I think that ordinarily it is desirable to have some division of salesmen where there is a variation in the quality, weight and type cattle offered for sale so that this salesman [fol. 606] can handle them. Ordinarily in the selling of fat steers one man is ordinarily qualified if he has the proper experience and training to sell those that go to the so called big packers and order buyers, except some light weights that normally fall to the butcher cattle salesman on account that his buyers buy these light weight steers known as yearlings and baby beefs. In view of the fact that packers have their buyers trained to buy the same grades of cattle, all concentrated in one man to make such purchases, we would not want to think that our salesmen were not as well qualified to sell the same grades of steers as they are qualified to buy, but it is true that sometimes a salesman's experience and training has been confined to cattle from certain territories and he has not had sufficient broad experience in inspecting and trading and selling of other grades of cattle from another region. It might take him sometime to become qualified to handle South Texas steers after having sold almost entirely Missouri grain fed steers.

I believe that an agency on this market can render a good service, carry on the duties of livestock marketing without the necessity of the Market Practice Agreement or livestock exchange. The Producers Commission Association got along fairly well on the first 7 months of its business and built a business that was one of the largest in the yards. I have visited the Fort Worth market where there has been no exchange for years, and there is no Market Practice Agreement, and agencies there, including one of our own [fol. 607] agencies, are successfully carrying on the activities of livestock marketing with no handicap whatsoever.

Recross-examination:

As being a necessity to properly buy and sell livestock, I think exchanges or trade associations are not a prerequisite to rendering good service to customers in the buying and selling of their livestock. These trade associations or exchanges have all practically organized previous to the passing of the modern legislation which we have governing our market places. I do not believe that I have given any testimony to the effect that they have no place in the program. That does not at all mean that clearing house associations

and such institutions as that should not function on these markets, whether an exchange or a trade association is established or not. The purporse of our organization was to represent the livestock producers in the marketing of his livestock and the only power and authority to function as a market agency, and the only wish to operate a market agency, came from those persons being served. Naturally they wanted to be served at those places adjacent to where their livestock was produced and marketed. In choosing the places to open up the market agencies it was not a case of choosing those places where an exchange was operated, but it was a matter of coincidence only that that was true. In our opinion we did not consider that any market agency or several market agencies at these markets were respon- [fol. 608] sible for the volume that exists there. We attribute that volume as something that has grown and developed as the country developed and as the packers set up their packing houses here in the West. The stockmen shipped their livestock there originally and sold it themselves. Then some of the growers saw the necessity of regularly established firms to do the selling, who made it a speciality, and if I read the history of our markets correctly the livestock producers established these markets originally and did their own selling. I think that the influences that make price are not within any trade association, as regards our livestock. They act only as a medium of finding those price levels and there are instances in our country today where livestock is being marketed on a large scale without going through any sort of trade organization.

As regards the decentralizing of our present livestock marketing system, we have gone forward on a program of utilizing in so far as we thought was well and good for the interest of livestock producers the existing facilities in livestock marketing, and wherever possible to supplement the existing system. We have made no effort of any consequence to take livestock away from the terminal market, where we thought it was being handled to better advantage and yielding the producer a greater net return there than any other place. It has been our program to work on one of efficiency and there is some question whether or not the piling up of tremendous quantities of livestock every morning in the shadow of the packing house, where the packer [fol. 609] buyers know that the stock is going to be sold,

removed such a distance from the owner's location that it cannot be returned without considerable cost, does not give the buyer a very strong advantage. There is some question as to whether or not there might be a better scheme. On the whole I think the fundamentals of the Trade Practice Agreement are entirely satisfactory and we follow them, and other agencies follow them, and we would follow them whether it existed or not. The undesirable feature of it was the fact that it limited the number of days that our agency could spend at soliciting business or servicing its customers in the country or carrying on its educational work among livestock groups in the country to thirty days each month. There are periods in the year when we have a large volume of livestock moving that we could probably use to advantage a greater time than thirty days. It works a hardship on an agency that has a large volume of business flowing to market at any particular season. In explanation of the *the* thirty days, I will say that that means all the individuals of the firm eligible to do soliciting in the country are limited to thirty days service in any one calendar month. The other factor that we objected to was the deposit of $10,000, which in a general way does not materially affect our services to our customers, but it does place that much money in a place where it does not yield our organization the maximum return that could be secured if it were invested in our business. It brings us 4% and we pay 8% on our float.

[fol. 610] I am not sure that Rule 19 concerning solicitation is for the *the* purpose of limiting expenses. That rule applied to a small market agency could not be considered as a factor limiting their expenses. It has occurred to me that such a rule should be based somewhat upon the business handled by each agency the previous year. In other words, each agency should be given the amount of time in the country to service its customers in proportion to the number of customers served the previous year. If a firm has eight or ten thousand cars of business a year, I think it is certainly entitled to sufficient time to service its trade. If the rule were eliminated, I think it would have a beneficial effect upon all the larger agencies that do a large business. Rule 20 of the Market Practice Agreement regarding soliciting of consignments in transit and prohibiting solictation at the drive-in gates or unloading docks has been satisfac-

tory and is a worthwhile rule. Rule 21 regarding the payment of telephone bills is a good rule. It possibly has some effect toward cutting down the money expended by market agencies. Another paragraph in this same rule with respect to the furnishing of meals and lodging by market agencies may tend to restrict expenditures, but it is my thought that agencies operating under average conditions, without a rule such as that kind would be guided by good judgment in its expenditures. There is a question in my mind as to whether or not the rule does not go too far into the management of the individual agency's business. I believe that the principle of industry cooperation is a sound [fol. 611] one. I think it depends on whose interests you are considering and I believe that there are benefits for agencies that have common interests operating on a market to associate themselves together. The question is as to whether or not by any exchange you are limiting certain incidental expenses, results in material savings to those agencies or not. And granting that it does result in saving, it still does not follow that it results in a benefit to the industry as a whole. The fact that you limit a market agency's expenditures in one way does not mean that that agency might not expend an amount to offset the saving there is some other activity toward getting business.

Some of the funds referred to as Farm Board funds have gone into the capital structure of the National Livestock Marketing Association and at least one of its subsidiaries.

It is my personal opinion and the opinion of the National Livestock Marketing Association and the Federal Farm Board that we would have a better set up at our terminal livestock markets if we had fewer agencies and stronger agencies, giving them more resources and permitting them in the collection of their commissions to save possibly a greater proportion of the commission charge as a reserve. The whole marketing end of the business would be improved without working a hardship on anyone engaged in the business. I think we carry insurance to protect us against the risk and hazards that are incident to our business. If there are any that I have escaped, I don't know what it is. We [fol. 612] carry the mortgage and theft insurance, employees' liability or compensation insurance, but we do not carry any public liability insurance or insurance against bank failures. I did not know that insurance against losses

due to bank failures while drafts and checks are in the course of collection was available. We carry a policy protecting us in case our checks are defaced. We carry fire insurance and shippers' proceeds insurance and in addition we carry insurance on all employees handling cash.

In my opinion it is all a matter of volume and the ability of the salesman and his training as to whether or not he is qualified to sell all grades or just one or two grades of cattle. The specialized plan of having salesmen to sell those different grades or classes of livestock is desirable, so that the shipper may have the very best advantage possible in having this livestock displayed and offered for sale at the time the buyer is wanting to look at it, and by a salesman who is well posted on how to price it. We, at one time, had under consideration the employment of another salesman. I stated that the purpose there was for further specialization and also to take care of some of the increasing business which we are handling. I think that the more information a salesman can have as regards the entire cattle situation, crops, supply and demand, the better he can serve his customers. There are a number of factors that enter into the time that a salesman will have to give to each carload or each animal he has to sell depending upon the volume that he has for sale. If it so happens that he had [fol. 613] got a large run of livestock and there is a small run on the yards, he has a large portion of the buyers' time in selling his livestock on any one particular day. He gets to show his livestock probably to better advantage than if he has a small run and other agencies have a large run, and he has difficulty in keeping the buyers in his alley any length of time. It varies somewhat as to the time that he has to spend in selling livestock or different classes. The stocker and feeder animals sell more rapidly than fat stock. More often fat stock is slow to sell and difficult to obtain prices satisfactory to the seller and the shipper. Veal calves ordinarily sell promptly in the morning. I have never engaged in selling livestock on a terminal market myself. I have often been in the alleys. The reason stockers and feeders sell more readily than fat cattle is the strong competition in the market between feeder buyers, particularly the so called traders. It is generally true that the person who sells the highest priced steer cattle get the larger salary. They are confronted with the very best

talent that is on the buying side, and one has to put up a salesman as nearly as possible that is equivalent or if possible superior to the buyer he is going to sell to.

Government Exhibits Number 27 and 28

Government Exhibit No. 27, the same being Table No. 3 in the Livestock Census Reports of January 1, 1925, covering the states of Arizona, Arkansas, Colorado, Kansas, Missouri, Nebraska, Oklahoma, Texas, and Utah, and Gov- [fol. 614] ernment Exhibit No. 28, the same being the separate from the Yearbook of 1928, and issues of Crops and Markets from January, 1930, to October, 1930, (Counsel for Government designating those parts of these documents which are to be regarded as the exhibit) were offered in evidence.

H. W. Garrison, a witness called by the Government, after being sworn, testified as follows:

I am hog salesman for the Farmers' Union Livestock Commission Company. I have been with this firm eight years and prior to that time I was a speculator and order buyer and also bought hogs for Morris and Company. I started in St. Joseph for Morris and Company and was transferred to St. Louis and then to Kansas City eight years ago. I operated as an order buyer and speculator on the St. Louis market for about four years.

There are four other boys besides myself in the hog division of the Farmers' Union. I have one that I call my assistant that does most of the sorting early in the morning and sells what we call "throw-outs", that is, the light lights and stock pigs, packing sows, and stags. We have one boy that brings truck-ins from the north gate and we have another boy in the alley that helps to sort. We have a night man that yards cattle and hogs that come in during the night. Our truck hog man gets down there as early as [fol. 615] possible because a lot of those hogs come in in the night. If he has a red bunch, whit- bunch, and black bunch, he will throw those three bunches together and bring them over to save time. If they are all mixed, he will take and mark different bunches and bring them over together and then we sort them out when we get them into our alley.

We never get very many big bunches in the truck division. If the bunches are different colors, it makes no difference how big they are. If the different bunches are the same color, he does not throw them together without marking. He carries a pair of shears and marks them different ways on the rump and puts that mark on each ticket. We do not aim to let him throw too many together. He will throw three, four, five or six bunches together. Most of the truck hogs arrive from midnight on. Most of them are in by 11 o'clock. Just as soon as we get through with him over there we use him in our alley. We are generally ready to weigh our hogs and we use him the balance of the day.

Hogs arriving by rail are received by us at the unloading chute. We do not keep a man down thereafter this night man goes home.

Our boys get down to the yards generally about 6 to 6:30 in the morning. Hogs arriving in the winter time are yarded downstairs where it is warmer. I get down to the office about 7:15. There are generally shippers in the office in the morning and we visit with them a little bit to find [fol. 616] out what they have, and if there is any special way that they want them sorted or sold.

I generally wait for the mail to come in in order to get any instructions which might be sent in, or manifest sheets, which are very important to us in the yard.

The hog market opens at eight o'clock. If the market is good, we will start selling shortly after eight o'clock. In order to determine what we are going to ask for hogs, we will look at the board and note all the receipts at the different markets. Sometimes prospective messages come from Chicago, and in the summer time we get the Chicago market. Most everyone goes by the Chicago market more than anything else. Of course, we can make up our mind as to what we think it will be, and if we sell hogs before we get the market, it is just our gamble.

I will go down to the men that I think will buy the kind of hogs that I have. If I have a lot of good light hogs, I will go up to one of the order buyers and price them to him. He will probably bid me and sometimes I sell them to him right there. If I think he has not bid me the market, I go further and get somebody else. If the market is going to be real good, the buyer will come to me and if it is not, I will have to go and get them. The offers and bids help

to determine the slant the market is going to take. Generally order buyers start bidding on hogs shortly after eight o'clock.

My assistant salesman early in the morning is practically [fol. 617] a head yardman. He weighs the stuff that he sells and does the sorting and does as much work as a yardman as he does as a salesman. The proportion of hogs sold by him will vary at different times of the year. I expect he will sell one fourth of them when light hogs and stock pigs are running heavy. It would not be that much now. I sell the bulk of the hogs right now because they are coming good and heavy. The summer months are lighter than the winter months. We have two light periods. April and May in the spring, and August and September in the fall. We have five pretty fair days a week in the hog alleys.

As fast as I sell the hogs I give the pen numbers, firm that gets them, and any "outs" that may be taken out, to the yardman. Practically every day I am in the yard until we are weighed up. After the hogs are weighed, I mark the tickets and get those ready for the office help. Then I generally have quite a little correspondence to do, answering inquiries about the market and stuff like that. I do not buy any hogs other than stock pigs to fill orders.

In most seasons of the year we aim to sort the hogs from 160 down and out and all the sows and the packers and thin hogs. If the light hogs are bringing the top, we might sort them a little deeper so as to get more in at the top price. If there is not much difference in the price, we will not sort them so deep. These are yarded in another pen and my assistant takes charge of those and sells them. I [fol. 618] might have to sort that load that is left maybe two or three differ-nt times. Where there are many owners in one load of hogs, we have to sell them and get the market for each bunch as nearly as possible.

The bulk of our business is made up of plural ownership consignments. They are mixed more than the straight loads of hogs. They are marked so that we can identify the ownerships. If they are of the same weight and quality we do not have to split them up before they are sold.

If it is a good, active market, a man can dispose of quite a few hogs, and if it is not, I have seen times when I couldn't get rid of very many hogs in a day's time. Day before yesterday was a bad market and it took me all day

up to three o'clock to get them all sold. I believe I had 21 loads of hogs and I expect three or four hundred truck hogs.

The past year was an unusually light year. Friday is a very uncertain day. We might have one or two or we might have eight or ten loads on that day. Wednesday is always our biggest day and is our hardest day. I really don't know how many hogs I ever sold in a year. There are days during the past year when I could have sold more. The largest number I have sold in one day was 58 loads, when I had 62 loads to sell. I did that with the assistance of my helpers. It was a very active market.

I think we had 175 truck hogs today and no car hogs. Yesterday we had 16 loads and possibly 300 truck hogs.

[fol. 619] Cross-examination:

The hog yards at St. Louis are on the same floor where the hogs are unloaded and the yard company delivers them right to your pen. That makes it easier because you do not have to have a man down there at the trains. The truck hogs are unloaded right at the yards at St. Louis and they do not have to drive them very far. This is about the most unhandy yards for handling truck hogs of any that I have ever visited. I guess it is pretty near a mile from where they are unloaded to our pens. Truck-ins at St. Joe and Omaha are handled in truck divisions. I believe the hogs are sold and weighed up right in those divisions where they are unloaded.

The Farmers' Union organization has devoted a lot of time and effort and money to the building up and strengthening of the shipping associations. I think the Farmers' Union started the business of a commission agency at this market about 1916. It has a rather strong organization in the State of Kansas. As a market agency, we get support from that organization.

The book-eepers and other men in our office have to work very late at night on many occasions to get out their account sales. I suppose this week our whole office force has worked until about seven o'clock or eight or nine o'clock. I think the whole gang ate down there by the Exchange Building Tuesday, Wednesday, and Thursday, and went back after supper. We have our yard boys working in the office after they get through in the yards. That is a [fol. 620] very frequent occurrence in the winter time.

There is such a thing that a salesman, no matter how efficient or experience- he is, may be overworked and not able to get the results he would like to. As a salesman, I appreciate the value of having a sufficient amount of time to work out my hogs. It does take experience, and long experience, to make a hog salesman. I think there is more in judging a market than there is in judging the hogs, but you have to be a good judge of the quality and weight of hogs. Not every man that goes into the hog alleys with experience becomes a competent hog salesman. A salesman has got to have a lot of pep, personality and nerve.

Respondents' Exhibit No. 13 shows a pretty good classification of hogs.

Recross examination:

The account sales are all figured up on the day the sale is made, but they are not all sent out that night. If they have a lot of prorates they cannot get them all out. Shipping associations in Kansas connected with our organization consign the biggest part of their hogs to our firm. Our firm depends upon the voluntary action and close association existing between it and the shipping associations in order to hold their trade. There is no contract compelling them to ship to us.

Redirect examination:

[fol. 621] I think all the commission firms on the Kansas City Market make an effort to get Association business. The chief reason why a shipper selects one commission firm in preference to others is the one that can give him the best service.

Recross-examination:

I remember one year our firm paid back $30,000 in patronage dividends and St. Louis paid back over $100,000. Ours has always been smaller.

Redirect examination:

The volume handled by our firm is not as large as those organizations at the other markets.

Recross-examination:

There is no general section of the country where the Farmers Union is any stronger as compared with other

organizations than it is in Kansas and Missouri, as far as I know.

(Whereupon the witness was excused.)

[fol. 622] (Whereupon corrected copies of Government Exhibits Nos. 13-A, B, and C were substituted for the copies originally introduced.)

Government rests its case.

CHARLES F. VIEREGG, a witness called by the Respondent, after being sworn, testified as follows:

I am in the sheep commission busjness at the Kansas City market. My firm is the W. M. Leitch Sheep Commission Company, and is a respondent. My partner and I have the same drawing account per month, but after that I have three-fifths interest.

Robert H. Stover is my partner. I have been engaged in the sheep commission business going on 13 years. I was with Wm. M. Leitch who is my father-in-law, and who was in the sheep commission business for about thirty years at the Kansas City Stockyards. Before I went into the sheep commission business I was one of the buyers for Fred Harvey Company. I was familiar with the sheep business for a good many years before I went down to the yard. The firm is still the largest exclusive sheep commission company there. In the number of sheep handled John Clay and Company will handle more than we will. In my first capacity with Mr. Leitch I was a yardman, did the weighing, yarding, feeding, watering, and sorting. It was a couple years before I sold anything, and then I could start out selling just cripples and odds and ends. I would say it was about two years before I was considered qual-
[fol. 623] ified as a sheep salesman. If we sold anything Mr. Leitch was right there as he was the main man all the time up until he took sick. The sheep pens are at the south end of the yards. They are all on the ground floor and are covered. The Stockyards Company attends to the unloading of the sheep at the chutes and they are delivered to the pens where they are yarded. The company starts bringing the sheep from about six o'clock in the morning

from the chutes, and our yardman is there to receive them. The Yard Company does not necessarily yard the sheep, but turns them down the alley to us and our yardman will take them and put them in a pen and get the man's name and number of head from the Yard Company. He puts a record of them on a card. The same process applies to the drive-ins only they unload them right there at the pens. The Yard Company employees are in the drive in alley to receive the sheep and they would have to yard them if our man was not there. If it is before six o'clock the Yard Company will yard them, and if it is after six the chances are our man will take them and put them in a pen. If the sheep come in in the night of a drive in ship is left in a box by the Stockyard man. Every commission company goes to that box and gets out its own drive in slips. Our yard man will put them all down on a card and the chances are he will put the sheep closer to the scales. Our yard man is an old experienced man and does sell some of the drive ins. He is qualified and a good judge of sheep. His duties are to be there at six o'clock in the morning and [fol. 624] recieve all these sheep and see that they are watered. If the sheep have been on the road for 24 hours and need feeding he feeds them. If they are out of a near by feed lot and are full we do not feed them. When Mr. Stover and myself go down we get the card that our yard man has made and we copy it; then we will go into these different pens of the sheep and we will decide what we will do with the sheep and just how we will sort them. If there are ewes, the first operation will be to sort them off. What we do depends on how they are mixed. Then, we will take these ewes and put them in small pens and "mouth" them. There are yearling ewes, two year old ewes, three year old ewes, four year old ewes, and what we call a "solid mouth." Then, we will have what we call a "short solid mouth," where the teeth are just about a quarter of an inch high. Then there is a broken mouth ewe, which is all right for a one year breeder. Then, we have what we call a "gummer" which has to be sold for just what it is. Of course, you can generally get more for a yearling ewe from a packer than you can an old one. After it is a year old you cannot break joint and you cannot fool anybody on it in the cooler. Different values are attached to different ages and conditions of ewes. In "mouthing" them we have to straddle each sheep, take hold of its mouth

and open it and look at the teeth. All three of us do yard work, sorting and weighing. The market is supposed to open at 8 o'clock and the packers quit buying at 3 o'clock. [fol. 625] Breeders can be sold at any time. I would say the average day is from 6:30 to 6:30. Sometimes we get away at 5 or 5:30, but the average night we are there at 6 o'clock. In certain seasons we are still there at 8 o'clock. During the drive in season there are so many consignments of 1, 2, 3 or 5 head. There is just as much work to one head as there is to ten head, but there is possibly more sorting with the ten head. We do not hold the money up for one or two head being sold subject. We have executive or managerial duties to perform such as correspondence to answer. We know our customers, and in the native season I go out through the native country and sort the lambs for the boys. Educational trips are peculiarly necessary because the patrons of the market are not big operators. We go right down in the country and corral these lambs and go through the same performance that you see in this blotter which we had printed last year just to send out to these firms, trying to help them pick out fat sheep and fat lambs. The farmer will go out with us and we will explain to him the lamb that is not quite fat, or the rib is not quite covered, possibly the loin or the joint is very prominent in the loin or the joints of the tail. We will show him how we will judge a lamb when it is fat. That saves them lots of trouble. There is a wide variation between the price of a cull lamb and a fat lamb. You cannot tell how fat the sheep is without handling it. The wool is what deceives the flesh.

Respondents' Exhibits 5 and 6

Whereupon, Respondents exhibits 5 and 6, the same being [fol. 626] a copy of a blotter showing how to judge sheep and a copy of the weekly market letter issued by the witness' firm were received in evidence.

In the fall of the year we have the lambs from the counties in the west, and then in the winter we have what we call the fat season. The range season is in the fall. It is necessary for a man in my business to keep in touch with conditions in the various States from which sheep originate in order to handle the business efficiently and adequately.

It is necessary also to keep in touch with the conditions in the states to which sheep go from this market. We have to keep in touch with men that might want to handle the feeder end of those sheep or the farmers that want the ewes. Climatic conditions affect the crops and pastures in these areas differently each year. It is very important to know these conditions so that we can know what to figure on from a feeding standpoint. It helps us in arriving at our ideas as to what we ought to get for them and in counseling our patrons with reference to the manner in which they should handle and market their sheep. We are in correspondence all the time and attend most of the conventions. We come in contact with men who own sheep in these various territories. I think our advise is of value to them.

A good many sheep are fed in Arkansas Valley of Colorado, and northern Colorado. There are sheep feeding districts at Monta Vista and Delta, Colorado. Sheep are [fol. 627] also fed in Kansas, Nebraska, Missouri, Illinois, Ohio, and New York. The fat lambs which come to this market for slaughter purposes come from Colorado, Kansas, and Oklahoma. There are big sheep feeding yards at Morris, Kansas, and at Prospect, each about ten miles from Kansas City. The sheep that are unloaded at those places have been on the road four or five days, and in some cases six or seven days. They are shrunk out when they arrive at these feed lots. We have to see that they are fed and watered until they are filled. Of course, they have men there that do the work, but we go out and look them over, and sometimes we sort them out there before bringing them to market. As a rule they stay there from two to three days. During the range run we are at both places every day. We do what we think is necessary. As the ewes and lambs are mixed we might sort the ewes off and bring them in by themselves, or bring the lambs in. Sometimes we will even mouth the ewes out there. I think the Prospect Yards have sheds there for 200 cars of sheep, and I guess the Morris Yards are as big, if not bigger. About 200 head of 120-lb. ewes can be loaded in a double deck car. About 250 head of 75 or 100 lb. lambs can be loaded in a double deck car. If sheep arrive after we are through in the yards, any time before six o'clock, we will meet the shipment when it arrives, meet the owners, see the sheep unloaded, and go to the pens with them and look them over.

We will come to town the next day, after they have had a fill, and take the owners out. Then we decide whether we [fol. 628] are going to sort them out there or in Kansas City. If they are filled up good we might order them in for market. Sheep are sheared in those sheds most any time when they are coming to market. We also take wool buyers out and make a trade subject to the owner's approval. We get no fee whatever for that service. The customary commission charge for selling the wool is from 2¢ to 2½¢ a pound. As a rule the shorn animal brings a little less than a wool lamb.

We have two automobiles which we use in our business. We don't charge any part of the expense of the operation of those two automobiles to our business. We could not have gotten along without those automobiles and have done the business efficiently. I do everything I can to keep down expenses. In fact, we have only one office girl, and she is the bookkeeper and stenographer. We do a good bit of the office work ourselves. We have to do a great deal of correspondence in the business. The girl makes out the account sales and Mr. Stover or I will check them over. We figure the tickets with her. Then she makes out the account sale. There are times when we have been real busy and have hired an extra girl for a month or six weeks. It is true of almost all of our operations that they require skilled and experienced men and women. We cannot ordinarily get them when the business suddenly expands.

I expect to attend the convention of the National Wool Growers in Colorado on the 10th, 11th and 12th. The Govern- [fol. 629] ment audit shows salaries, but Mr. Stover and I are not on a salary. It is just a drawing account. It is a very small drawing account, and as far as the expense of the firm goes, the report is not a true copy of our expense. We have not shown the automobile expense for two cars, and we have shown only the drawing account as salary. We do not show the gasoline expense that we use in the automobiles. The general range in values on sheep are subject to constant fluctuation. The fluctuations or differentials between the various grades of sheep within the general range of the market close up or spread out from time to time. We have to keep in contact with those things in order to represent properly our customers.

Cross-examination:

We have lambs of all the breeds shown in Respondents' Exhibit No. 7. We have to classify them. There are very few of some of those breeds that come here. We sell every shipment separate. The kind of a sort which we would make would depend more upon the purchaser than it would upon the factors outlined in Respondents' Exhibit No. 7. This Exhibit indicates the variation in the kinds, breeds, origins, classes, and feeds with reference to sheep and lambs from a standpoint of the general knowledge one needs to have as a sheep salesman, rather than being related to the sorts we have to make in selling sheep.

Respondents' Exhibit No. 7

(Whereupon, Respondents' Exhibit No. 7, the same being [fol. 630] a chart showing the various grades and classes of sheep, was received in evidence.)

Redirect examination:

Our total sales of sheep in 1929 amounted to $1,950,449.44 and the purchases amounted to $241,407.57. We sold 200,177 head and bought 25,991 head. I am afraid that if we had only $1,723 as working capital, the bank would never pay an overdraft. The bank has to pay over drafts in lots of cases. There is invested in our business a net worth in the form of partners' capital of $17,044.03, and we are not over capitalized. If we had only the capital allowed by the Government, namely $1,723, we couldn't do the volume of business we are doing, and probably would have to go out of business. There are months during which we sustain a loss. We carry that over to the better seasons of the year when there is a greater volume of business.

Cross-examination:

The heavier carlot business in sheep is from the middle of August to the first of November. That is the class known as western lambs. The busiest time for drive ins is from May until the first of August. During the range season the shipments arrive at nearby feed lots on Friday or Saturday to give the lambs a chance to fill before putting them on the market. We try to distribute them the next week.

Mr. Stover and I do the selling and together we manage the business. We stay in the yards until the work is done. [fol. 631] It depends on the season of the year and how much business we have, as to the time we get through. In the fall of the year we have the range run, and in the summertime we have so many drive ins, and we do not know that they are coming. Sometimes they don't stop coming until after dinner. Sometimes it is two or three o'clock before we get up to the office. At other times of the year I would say that we get up to the office from twelve to two o'clock, on an average. We are ready to sell either carlots or drive ins when the packers are ready to buy them. Our receipts last year by months were as follows:

	Drive Ins.	Rail Receipts
January	1,296	18,204
February	902	11,338
March	530	12,039
April	495	18,673
May	1,647	18,628
June	3,759	7,380
July	6,204	3,966
August	4,285	14,407
September	2,428	13,155
October	1,811	32,683
November	1,885	12,465
December	1,612	10,458

The blotter and the market letter, shown in Respondents' Exhibits 5 and 6, respectively, are sent to patrons free of charge. They are means of advertising our business. [fol. 632] The main object in sending out the report is to keep our customers informed as to prices and conditions of the lamb market. Our firm has a mailing list for sending out these forms, or circulars. In nine times out of ten they will tell us to keep them posted. We put on our mailing list the name of anyone who has requested this information. We get our list by men asking for the market letter, and by our firm being recommended by our friends. We run ads for the sale of sheep in this paper and sometimes when a sale is made, as a result of these ads, the farmer will pay us a commission. This is called a country commission, and no account sale is made for it. As a rule we charge 10¢ a head for a country sale or purchase.

My partner has an automobile and I have one, which we use in our business. I have a Hupmobile, and my partner has a Chrysler. We have to have five passenger cars, because we have to take so many men out to the feed lots. The record shows that the gas and oil bill and repairs for the year were $509.00 and possible deterioration in my automobile of $850.00. I would say my operating expense of that automobile has been around $1,400 including deterioration, repairs, gas and oil. These automobiles do not belong to the firm, and we do not set up the cost of these cars in our operating expenses. It is just like our salaries, we have just had drawing accounts, figuring that it might pay our automobile expenses and keep things up. At the end of the year I would divide the profit three fifths and two-fifths. I [fol. 633] think my record will show that according to the audit last year I received around $8,000.

Split commission is where a firm turns sheep over to a commission man to sell the sheep for them, and they split the commission. We don't sell many sheep for outside firms. We would rather not have that kind of business. The firm to which the sheep are consigned gets the regular commission from the owner, and they pay us half of that commission. We sell for Theis and for Gladish. Somebody at one end or the other is losing money on split commissions. Some firm will turn it over to me, and all I do is sell it. I have no responsibility in the case of remitting more money, making a mistake in the remittance, and you have no chance of selling the mortgaged sheep, no responsibility in that regard. If the sheep company handled its customer's business the way it should be handled, and advised with the customer and helped him, he would lose money on half commissions. Whoever the man is who has handled that business properly and pays the expense of going and of advising with the customer, sorting livestock, and doing that kind of work, he is losing money if he is getting only half. If somebody would take my business and pay all my expenses and just let me sell on the yards, I would not have any telephone or telegraph bills, or postage, and I would not have taken any trips to the country. I would say I could make some money, because I think my expenses are three quarters, maybe more than that, of the commissions. [fol. 634] I mentioned a transaction with one Joe Kerr. I wrote him and told him I was sorry the draft got there

before the bank closed, and I sent him a note to sign and a mortgage. I will carry the note myself, but I told him that if he could get the money right back to us, I would not charge him any interest from the time the shipment was purchased until he got the money to us. Now, whether or not that will stand, I do not know. I am just trying to get my money. I hope to know in a day or two what he is going to do, but as it stands now the bank has informed me what they have done, and that I am a creditor of the bank. I also described a transaction on some sheep for a man named Watson, involving the Intermediate Credit Bank. We were sued, but that case has been dismissed. I can not think of any losses which our firm has suffered or money which we have had to pay out by reason of stolen or mortgaged livestock, or any other livestock of which the title was not as it should be. If there is any loss in connection with the remittance of proceeds after they have been deposited for the credit of the shipper, we recognize whatever liability the law imposes on us. We have suffered loss from the remittance of proceeds. We had one case this summer sometimes. By some mistake we weighed up four head in a drive in consignment along with another shipment that belonged to someone else. That gentleman took the ticket up to the office and the girl paid him. That evening we were checking up from the drive in slips and the girl saw that she had given him money for twelve head instead of eight. The Yard Company checked over its [fol. 635] books and found that one commission company was four head short and we were four head over. I told the commission firm that I would pay them for the four head average of our shipment and put the price on it that our sheep brought. They were not satisfied and we went to an arbitration. This arbitration committee decided that I should pay for the four head average weight, but their price. We advised our customer about it, and his brother was in the office and said that he only brought eight head in for his brother, and that he would send us the money on the basis of the price he got and the average weight. He hasn't brought it in to date. In another case the girl made a mistake and made a check out for $50.00 instead of fifty cents. We never got that back. There are other hazards than those that we have mentioned. We used to finance a lot of feeders. One man went broke, took bank-

ruptcy, and it cost us $45,000. During the bad years of 1920 and 1921, I would say that our outfit lost between $50,000 and $100,000. That was practically all in the loan business.

If twice as many sheep came to us, and they came in just the same way that they have come, that is the same proportions of different kinds, and classes, and types, and grades, and breeds, from the same sources, and so on, I do not know that it would be necessary to hire another salesman, but we would certainly have to rearrange our business. We would have to have some men at some end of the line. The chances are that Mr. Stover and I would sell them, but as it is we help sort them every day. Sometimes it may be perhaps our yardman would be over mouthing [fol. 636] sheep, or he might be billing, or he might be sorting the wethers from the ewes. Maybe Mr. Stover would be sorting another bunch. If we had twice as much, the chances are that we would do our selling just the same, but we would necessarily have to hire more men in the yards. The chances are that we would have to hire more people in the office, because that would take us away from our office if we had just twice as much under those conditions.

As to how many carloads or head of sheep a salesman can handle efficiently in an ordinary year, I can answer that, "how many lawsuits can a lawyer try in a year?" There are a thousand things that would enter into it. Some days we work all day on a load. Some days we would sell ten easier than we could sell one. There is no way of getting at that question at all as I can see.

Redirect examination:

I have never rechecked the audit, but I presume it was correct. We try to employ to the best benefit of the business and in as economical a way as possible, all working capital that we have in the business. We use the established credit which I and my partner have individually.

We have got to have more money at the peak, and we arrange to have more money. If we need more money we take some of our notes over to the bank and borrow on them and put it to our account. As soon as we get through with the peak movements, we take up the notes. I think that we could not cut the expense of doing business in any way

[fol. 637] possible. I think we have got it right down to the minimum right now. I have not had a vacation since I have been in the yards. I even work Sunday. There have been times when we have been busy and spent all the day in the feed lots sorting sheep.

I believe more advertising would help. Specialties and novelties amounting to $741 during the year went to our customers. Most every customer who comes in wants to know if we have got a book and a pencil. That has been customary in the business for years. Our total for rent was $588, less rent from subtenant of $384. I consider that low. An item of $112.17 for mortgage and theft insurance is paid to the Hartford Insurance Company. That policy contains a clause that the company will only be liable in the event we hav- used due diligence with respect to the particular transaction out of which the alleged loss arises. We try to use that degree of care.

The figures which I have in regard to the number of head handled do not agree exactly with the figures shown on the audit. I asked her the other day if she had ever rechecked this audit, and she said no. There are lots of times when I, as a salesman, do not have as much time as I would like to have to put in on sheep here and in Prospect and Morris feed yards. I think it is an advantage to the Kansas City market to have these feed yards. It saves the owners of those sheep a good deal of money, and we get a chance to advise with them in regard to handling them. Sometimes, if they would come right in, they would have [fol. 638] to sell as feeders, where a few weeks' feed would make them good. When wool is selling high and there is a good market, sometimes the shearing of the sheep will make a man a dollar a head or more. If they would come right straight in, we would not have that. We make no extra charge for the sale of wool. We could not handle more sheep than we have handled without having extra expense. As it is, at peak movements we sometimes hire men to help us sort the sheep. Mr. Stover and I sell all the car lots and sometiemes our yardman will sell some of the drive ins. The efficiency of the sales, to some extent at least, depends upon the amount of time we give to it in the examination of the sheep. It is not in the interest of the customer to sacrifice any part of that efficiency.

Recross examination:

It looks logical to me that if the packer is going to buy direct he is going to make some money by it. There are days when we have to work longer and harder.

When the partners retired from our business we did not pay them anything for good will, but we paid their losses. I do not know the difference between good will and going value. The satisfied part of it is more than the friendship. He might be a good friend. We would have friendly feeling but if he did not think we could get the price for the sheep, we would not get the sheep to sell. The satisfied part of it is the very thing that will build up the business. In the [fol. 639] case I mentioned this morning when the customer got the weights on those lambs he knew that we had taken care of them. He turns right around and tells us to write to another man, his neighbor, to whom he has recommended us, and that is what builds up any commission business.

I do not aim to keep eno-gh money in the business to make loans at all. I keep enough in there to run the commission business. I regard all the money in the business as necessary to run the commission business even if we made no loans.

Redirect examination:

We have a family car besides the automobile that I use in the business. In the last four or five years I have not accumulated any surplus out of this business outside of my actual living expenses. We live in a very common way. I have one daughter that is away at school.

Whereupon the witness was excused.

Charles H. Haren, a witness called by the Respondents, after being duly sworn testified as follows:

I am a sheep salesman for John Clay & Company at the Kansas City market. I went into the employ of Clay-Robinson and Company in 1905, as a yardman in the sheep department. I was a yardman for a number of years and during that period I started out by selling a few crippled sheep in small bunches. It developed where I was selling the native sheep, and finally became what may be termed

a full fledged salesman. In 1918 the head salesman died [fol. 640] and I took his place. In 1922 one of the partners of the firm of Clay-Robinson and Company retired from the business and the other parties continued the business under the name of John Clay and Company, and I have been with them since that time. I think the records will show that we have handled larger volumes of sheep than any of the other firms at this market. I started to work at the stockyards in 1896, and I had been actively identified with the business at the yards from that time until I went into the employ of Clay-Robinson and Company. I started in as a messenger boy for the Stockyards Company in 1896. Among my other duties was to carry bills and other papers between different points of the yards and in doing that I became familiar with the general layout of the yards. After a year or so I was promoted into the office of the Stockyards Company and part of my duties there were to write up waybills that the railroad company delivered with each car of stock. In that way I familiarized myself with the general business of receiving stock at the Kansas City Stockyards. Later in my experience with the Stockyards Company I was a weighmaster and was finally located permanently as a weighmaster in the sheep house. I spent several years at that. While I was there I observed as much as I could about the handling of sheep on the market. I familiarized myself with the different classes of sheep. Most of the salesmen in the yards start in as boys in the same class of work that I was doing. When I started in with John Clay in 1905, I was 26 years of age, [fol. 641] but I was a boy in experience as far as the sheep business was concerned. I worked under a man who was quite a task master. I found that experience and that training under him very valuable in my later life. I started in on the 6th of July, and I had an opportunity to work along that summer until the runs became heavier in the fall, and I was pretty well hardened up, and the hours were long and the work was hard. One of my first duties was to go to the train office at the yards where the bills are posted and the receipts, shipments are received during the night, to see if we had any shipments in. If there were any at the chutes, it was my duty to go to the chutes and get them, with the aid of the stockyards company's employees, and take them to the sheep house. If there were not any at the

chutes I went over to the sheep house and found what was in during the night. Those sheep all had to be watered and sorted, that is, a good portion of them had to be sorted with the assistance and help of this salesman, I gradually acquired a knowledge which was necessary to allow me to sort properly those sheep. After I had sorted them as I thought best, the salesman would help me to sort them further, if they needed to be, before they were properly shaped up to show the buyer. After they were sorted they were all watered I would help the salesman by going around with him and opening the gates and getting the sheep up on their feet for the inspection of the buyer. After they were sold; if they needed additional sorting, I did that. I assisted the packers' sorters in sorting them up. After [fol. 642] they were ready for the scales I took them to the scales and weighed them in the usual way. After they were weighed I would secure the tickets and mark the prices which the salesman had previously told me was the price on the ticket. I took the ticket back to the salesman for verification, had it O.K.'d by the packer buyer, and eventually I would take the ticket to the house. Frequently it was necessary to carry sheep over from day to day, and it was necessary to feed them. Among my other duties it was necessary to see that the sheep were properly fed, watered again, and sometimes the sheep would be brought over by the stockyards and delivered to us. Among my other duties were to keep a check on the number of head received and the number weighed, and to see that they corresponded. In the sorting of sheep there were a number of different kinds to arrive, which would have to be sorted before they were ready to show. They had to be sorted for different ages and classifications. In the case of lambs, if they were range lambs, it might be advisable to sort off the feeder lambs before showing the fat lambs to the packers. In the case of ewes, it was necessary before they could be properly sorted to determine their age by looking at their teeth. After we had marked all of them, the salesman and myself, or as it developed later when we had an additional helper, one of us would drive those sheep through a sorting chute. Wethers were classified and sorted in the same way. As a sorter I had to know the classification in which those different lots of sheep were to sell. Con- [fol. 643] siderable portion of my time was taken up as a

yardman in checking these counts that I mentioned a while ago. A great many shipments contained plural ownership. In that case it was necessary to sort each individual owner's sheep out to themselves before sorting them to show to the buyers. In weighing sheep belonging to different owners the same care was taken as in the case of one owner, keeping each separate owner's sheep in one lot. After I had been working as a yardman for a while, the salesman let me sell a few odd head under his careful direction. He wanted to see that I got their approximate value on the market. Later I did sell native sheep and he sold the Westerners. I sold a part of the feeders in the fall and bought feeders. It was not an uncommon occurrence to get to the yard at 6 o'clock in the morning and work until 12 o'clock at night during the busy season. Frequently we were so busy that I could not get away at lunch. Quite often at night we wait- until after dark to get the sheep weighed up before we finished the day's billings. Most of the time we were so busy that we would not have time to stop and take these counts until we were all finished. That work was done before we left the sheep house, before we turned the tickets into the office. Since I have been the head of the sheep department at John Clay and Company, we have another salesman who now does the work comparable to what I did under the former head salesman. He sells the native sheep. He sells part of the feeders, buys feeders, and when business necessitates my being [fol. 644] away from the market he sells the other sheep also. This man who sells the natives sells most of the drive in shipments. We also have a yardman who has been with us a considerable time, who is getting to a point where he can sell some drive ins, and all of us more or less still do considerable yard work in helping each other get the sheep sorted and getting them to the scales. Sheep differ from cattle and hogs and have to be handled to determine the degree of fatness. In some cases it is not necessary to handle more than a portion of them, and it is always necessary to handle a good per cent of the shipments. In the case of small loads, such as truck in consignments, we handle practically every lamb in the shipment to determine how fat it is. In connection with my duty as sheep salesman, I have other duties which take me away from the yards. I attend to all the correspondence my firm has in

connection with the sheep business. I am called upon frequently to go to the nearby feed lots, either with shippers or at their request when they are not here to inspect their consignments which are located at those yards before they are put on the market. I am called upon both by letter and telephone for advice in regard to sheep which customers may have. I am called upon to go into the country and see the sheep and consult with the owners about them. It is necessary for the conduct of the business that I keep myself as well informed as to the conditions in the country over the area from which sheep are shipped to this market. In 1929 there were sheep received at this market [fol. 645] from 21 different states. The classes of sheep received from some of these different states vary greatly. That I keep informed on these conditions it is necessary for me to travel over a considerable extent of this area I meet the shippers or owners of the sheep. I attend meetings and conventions where I know they will be. I am called upon by telephone frequently at night after I have gone home. I have to hold myself in readiness at all times to be able to give advice. All of our business cannot be transacted on the six usual working days of the week. There is not a Sunday that I am not in Kansas City that I do not go to the stockyards during the morning and either stay there until noon or go out to one of the nearby railroad feed lots. Legal holidays are the same way. The first five days of the week I reach the office in the Exchange Building at approximately 7 o'clock every morning. There are very few days even in the lightest time of the year that I leave the office before 5 o'clock in the afternoon. During the busy season of the year I very seldom get away from the office before 6:30 or 7 o'clock. On Sunday I may be detained at one of the feed yards so that I cannot make both of them in the morning. In that case I have to go back in the afternoon. It is not an uncommon occurrence for me to leave home on Sunday morning in the fall of the year at 6 o'clock and not return until 6 in the evening. On Saturday I usually get down to the office about 8 o'clock in the morning. These country trips are made at the season of the year when we are not quite so busy [fol. 646] in the yards. I have several regular trips that I have been taking for a number of years. Usually in March I go to Arizona, New Mexico, and some years California.

About the middle of June I usually go to Utah and Western Colorado. Usually in the latter part of November and into December I go to Arkansas Valley and the San Luis Valley in Colorado. There are other short trips that are made as necessity arises, for which there is no definite time set. If those trips are made during the busy time of year, they are usually made Friday or Saturday. I am positive that these trips are of advantage to me as a salesman because *it* give me information which is of benefit to the customers. It is necessary that the salesman know the various classes of sheep and the districts from which they came, and it is necessary that he know the conditions existing in the particular sections from which they come each year. Recently I made a trip to the San Luis Valley in Colorado, which is a feeding section, and ascertained the number of lambs each feeder had in that section. After I had finished I wrote the newspaper and to the banks giving the information showing the number on feed compared with the number on feed the year before. I have had inquiries from other sections of the feeding country inquiring as to the number of lambs on feed in the section where I was. The reason for that is that the number of lambs on feed in the various sections and the time of year that they will be ready for market, has a very direct bearing on what feeders in other sections of the country may do, and how they [fol. 647] may finish their lambs so as to have them on a favorable market and not get them all here at the same time. In one particular case after the man had obtained this information he changed his entire plan of feeding his particular bunch of lambs so as to have them in for a particular market. I see published reports from the Department of Agriculture which give the totals from the various sections.

Respondents' Exhibit No. 7 was prepared under my direction. It represents the various classes of lambs, wethers, rams and ewes that come to this market, with the exception of ewes. There are more classifications of ewes than are shown on this exhibit. There should be four year old ewes, good solid mouth ewes, short solid mouth ewes, and spread mouth ewes. All the factors and conditions mentioned on this sheet have a bearing upon the value of the sheep that reach this market. There are a great many various classes of sheep and lambs. There is no mention

here of goats, and the sheep salesmen sell the goats, and while there are not as many classifications as there are of sheep as to breeds, there are as many classifications in regard to sex and age. Every item on here is a determining factor in the price and the value of sheep, not only the age and whether or not they are shorn or unshorn, but the section of the country from which they come. It is a fact that they come from different states and different sections of the United States where the climatic conditions are very different. They range all the way from the extremely hot [fol. 648] Imperial Valley in California to the high mountains in Utah and Colorado and other sections of the Northwest. It is a climate that will vary greatly from year to year.

There are a number of competitive influences affecting our business in the marketing of sheep. They are the influence of other markets, the influence of competition among firms upon this market, the activities of the packers in buying the sheep away from the market, and the activities of the cooperative agencies which secure funds from a source, which are not available to us.

We do some work on the Morris and Prospect Feed Yards with respect to the consignments of sheep which come to our firm. Since the establishment of these yards close to the market, it has become customary for the owners to bill their shipments so that they will make their last unloading and feeding at those yards. The purpose of that is that the sheep can be rested and filled before being put on the market and can be better distributed from these points than as though they came directly into the market. A great many of our sheep come great distances and it is necessary that they be unloaded one or more times en route before they reach the market. The owners may or may not accompany their sheep to market. In the cases where they do come with them, after the sheep are at these yards they want our opinion and judgment as to how they are filling, whether they are properly fed, whether they should be sorted out at the feed yards before being put on the market, [fol. 649] and how long they should be held there. In case the owners do not come with the-, they may notify us or they may not that the shipment is en route. They know from past experience that we will see those sheep there and will determine all the things in connection with their

marketing, whether they are with the consignment or whether they stay at home. The location of those yards is very advantageous to the owner who sends the sheep, and no additional charge is made for our services.

Whatever work we do out there must be compensated for in the commission charge which we collect for selling the sheep upon the Kansas City market. Frequently the sheep are shorn out there and we have supervision of that. We make no additional charge for selling wool. The Producers Commission Company, a cooperative agency, also sells sheep on the Kansas City market. I am more or less familiar with the Government Farm Board's set up with reference to the handling of wool. It is the National Wool Marketing Association. Private commission firms who handle wool exclusively charge 2¢ per pound for selling it. The Government Farm Board Wool Marketing Agency in this territory is charging 4.2¢ per pound. Wool at present ranges around 18 to 20 cents per pound, so that 4.2¢ would be in the neighborhood of 20 to 25 per cent of the value of the wool. I understand the price is the same regardless of the quality or value of the wool, and not all of the wool is worth 20¢ at present. The Government took charge of the sale of wool during the war time. The rate allowed to dealers at that time for the handling of it was 5% on the [fol. 650] valuation of the wool.

I am not an owner in the firm of John Clay and Company. I spoke of the cooperative agency financed by the Farm Board having the use of Government funds that were not available to us. That interferes very materially with our business, due to the fact that sheep men securing loans through that agency are compelled when they secure the loan to agree to sell their livestock through an organization at one of the terminal markets connected with this association. It is my understanding that under the Agricultural Marketing Act, the basic interest rate for such loans is the lowest rate of interest at which the Government can at the time float its own obligations and to that is added the expense of financing. That makes the rate less than that at which my firm is able to loan money. My firm has conducted a considerable loan business. It has been done with the idea of assisting the commission business and increasing that part of the business. It has assisted in the obtaining or the retention of business. There was a great

deal of loss during the deflation period in 1920 and 1921. The executive management of our firm is in Chicago and John Clay is the head of it. He has been engaged in the livestock business since 1886.

The executive manager of the organization here at Kansas City, Missouri, is James Reid. I would estimate that he has been engaged in the livestock commission business from 30 to 35 years. A very large part of our work is in [fol. 651] the way of counseling and advising with customers concerning their problem in the growing and feeding of sheep.

Drive ins that come in to the market by truck take considerably more time to handle and use up more time of the salesmen and the yardmen as well as the office force.

I have seen the value of the sheep fluctuate more in one day than the amount of our commissions reduced to a per head basis as shown by the 1929 audit, amounting to only 8.43¢ per head handled.

On the present market, about the greatest spread that I can think of between the various grades and classifications of sheep, from the least valuable to the most valuable, is $7.75 per hundred weight. When sheep are selling up around 21 or 22 cents per pound, the spread would naturally increase.

I am a director of the Kansas City Livestock Exchange and a member of the bond committee. I think our methods of remitting proceeds through deposits made immediately upon the day of sale with the correspondent bank of the country bank with which the shipper does business, expedites the handling of the customer's business both as to the time that he receives a credit for the money and the safeguards which are thrown around it by the present method. It tends to establish and maintain the integrity of the market from a financial standpoint. It eliminates the float entirely. My experience as a member of the Board of Directors and a member of the bond committee has shown to me that it is a helpful factor in maintaining the generally low [fol. 652] premium rates on surety bonds on market agencies here.

The yardmen employed now perform practically the same duties that I performed when I was growing up in the business except that there is more sorting to be done now. We do not get as many straight consignments as we

did in those days. Three men work exclusively in the sheep department for our firm here at this market. The general office force do the work that is connected with getting out the account sales and do the stenographic work in connection with writing our letters. I have information in regard to the direct buying of sheep by packers in the country.

In addition to this the packers buy a great many lambs on the range, particularly in the west, from territory that is tributary to this market. I made some inquiry about a month ago in regard to that from different sources and I have some letters here containing that information. That information is valuable to me for the same reason that I mentioned in connection with the lambs that the packers feed. It has been my observation that when these lambs are shipped to the market, it reduces their needs to that extent, and it is a factor which we have to use in determining the probable trend of the market so that we can advise our customers. It gives the packers an advantage over the salesman that he would not otherwise have, because these packers are well informed as to what the receipts are on the different markets each day and they know naturally [fol. 653] what proportion of those receipts actually belong to them at the time. They alone know when they are going to move these lambs into the packing houses for slaughter. It has a great effect upon the peaks and valleys of the open market receipts. When they are operating in the country, it has the effect of curtailing the receipts at the market and when they are not operating, those shipments are moved to the market and there is no way for us to prejudge what their activities may be. It has a tendency to increase our unit costs of operation very materially. The method tends to forestall the requirements of these packers indulging in it for their local plant operations. (Witness reads into the record a number of letters received from the other branch houses of his firm relative to the feeding and movement of sheep for packers.) It is impossible to determine what proportion of these operations represent sheep bought on the public markets. The only letter that mentioned that was the one from Chicago, and I presume their figures include lambs which are bought possibly on the other markets as well as the lambs which were shipped direct from Ogden. The packers do buy some fat lambs on the Denver market

and ship them East alive, and they do buy some feeder lambs on that market. They do sometimes here at this market.

All the sheep or lambs that pass through the Ogden gateway coming East originate in the country. There is no market from which they could be forwarded. I might add also that that applies to the figures given from Denver. [fol. 654] Those shipments in there are from country points. There is nothing to prevent any of the packers from purchasing their requirements direct from the country. To the extent to which they do it, it may either shrink or expand the volume of our operations on the public market. We have found that it is absolutely necessary for our organization to be ready to handle the big demand upon our services as well as the diminished demand when the packer buys his livestock again in the country. I know that some lambs bought by packers at western points are based on the prices at Kansas City.

I attend conventions of sheep men and wool growers for the purpose of giving us an opportunity of meeting a large number of men who are customers or prospective customers and who want to know conditions in respect to the market. They want to know what we have learned about conditions in other parts of the country and to be advised about their problems in the sheep business. I think I am safe in saying that I have not attended a convention in the last year in which there has not been a member of the Farm Board, or at least one, and usually more, representatives of the Farm Board. They have been preaching the gospel of cooperative marketing both in wool and livestock. The representatives of the various market agencies also attend those conventions. These conventions are valuable to the producers and the market agencies.

Cross-examination:

I have a large range of duties to perform in connection with my operations as a salesman for John Clay and Com- [fol. 655] pany. I put in the major portion of my time as a salesman. I am on the market most of the time. I am not financially interested in John Clay and Company and have no share in the business. During the time I was with this company, growing up in the business, I received a regular wage or salary. When I went to work for them I took

what they offered me for work. I was always aiming to be as valuable as I could and to get as much as I could for my services. When I first started out, the salesmen helped me sort and later additions were made to the force and I had other yardmen who helped me. In the case of those sheep sold by our yardmen, I might tell him in some instances what I think the sheep are worth, and in other cases he might go ahead on his own initiative and then consult with me after he has been bid on the sheep. I look at the sheep and talk with him before I turn him loose to sell, but I don't want to give the impression that he sells any considerable number of them. They are just in small lots. It is not confined to the truck business entirely. Occasionally he sells an odd head out of the load lots. He sells a very negligible percentage. My assistant sheep salesman goes to the country some. He is not away from the market much of the time doing country work. He makes possibly one or two trips a year a week or ten days at a time, and he occasionally goes out over the week end as it may be necessary. In the summer I am sometimes away three to four weeks during the light time of the year. I have never figured up how long I have been away altogether from the market dur- [fol. 656] ing the year. I make three regular trips as a rule.

The assistant sheep salesman went to work in 1918 and worked as a yardman for two or three years. He went to Chicago and was with the firm there in the sheep yards for several years and then he came back here to work. He exercises his own judgment in regard to the price which he will ask for the sheep which he sells. He handles part of the correspondence, that part of it in connection with the sales which he makes and in connection with the feeder buying. I would say that in so far as they go, his duties are just as responsible and just as important as mine. I sell a larger proportion of the sheep than he does, because we receive more western sheep than we do natives. I do not know how much more I sell in a year's time than he does. I would not say that that is the only difference. If there are any questions that come up in connection with the sheep business whatever and don't particularly pertain to his duties, I am the one that decides them. I usually talk with the shippers about their problems. He does discuss shippers' problems with them. When he runs up against some-

thing especially difficult, he calls on me. When he is away I sell all of the sheep. While he was in Chicago I had someone else who had the same position that he has now. I sell all the sheep at the time when he is away from the market. He takes a ten day vacation. His trips in the country are not considered vacations. He takes his vacation usually during the light run in the summer time.

I do not know how many sheep I could sell in a year, or how many I do sell in a year. It would be impossible to [fol. 657] determine that from the records. I have never had occasion to make a study of it. The record is not kept separately of what he sells and of what I sell. I would not think that the number of sheep that a salesman can handle is a factor in considering the value of the salesman to his firm. The chief qualifications of a salesman are his honesty, his knowledge of sheep, his knowledge of the demand on the market both at this point and at other markets and in the country, his ability to judge the weight of sheep, and the natural trading aptitude that he must have.

As head salesman I have had something to do with making recommendations as to the employment of salesmen. He will handle whatever volume there is to handle if he has the qualifications which I mentioned. The owner determines the volume of business that a salesman may handle. I make no recommendations in respect to that. I have nothing to do with the determination of the amount of salary paid the assistant salesman. The volume would not be a factor if I were hiring a sheep salesman. We would hire him for his ability and depend upon him selling the volume that came in to the firm. I would hire a salesman whom I thought was competent to handle whatever volume of business I might have. I would not hire a man under any circumstances if I did not expect to have something for him to do. If I hired a man and he did not do as much as I thought he should do and did not do enough to earn his salary, I would not keep him. The business would not justify keeping a man if we did not have enough business to pay him. Not having been in the commission business as [fol. 658] an owner, I do not know how much business a salesman ought to handle to justify having him.

I do not know the largest number of sheep handled on any day during the past year by me. The largest number of cars of sheep which were received during any day was

between 35 and 40 cars. I do not recall whether they were all sold the same day. I do not know how many I sold, or how many of them were Westerners. If they were all sold the same day, my partner and I sold them. I have seen days this fall when it would not have been possible to have sold them. I have seen other days when it would have been depending upon the conditions of the market. As a rule we don't carry over many sheep from one day to another. We have carried them over in considerable number. It is exceptional, for the reason that we attempt to regulate that as much as possible through these various feed lots. We can order the sheep in on the market as we think advantageous. If in our opinion it is to the owner's advantage to hold part of those sheep at the feed lot for a longer period than we would under ordinary conditions, we will do so. In regard to truck-in shipments, we handle practically every sheep consigned to us. What I mean by handling is that there is a certain portion of a sheep's body which we feel to determine the amount of fat that the animal carries. That handling is done mostly on the back, just back of the forequarters.

If the buyer and seller agree on the number, the sorter [fol. 659] for the packer as a rule marks the lambs which are to come out, and the seller advises his yardman what that number is and sees that that is the number which does come out. The real job of sorting is left mostly to the representative of the packer and our yardman. Usually all of the time that I have left after selling the sheep and going to these adjacent feed lots is spent in the office with correspondence. If we have a comparatively light run and the market is active, we frequently are sold out by noon. During the heavy periods of the year we frequently do not get sold out until five or six o'clock. I could not tell definitely how many hours I spent at the feed lots during the last year or the last month.

I have sorted in the country quite frequently. I acquire a great deal of information from these people. It is a sort of a mutual helpfulness. They give us details of how they handle and feed their sheep. The firm gets the benefit of the information that I acquire in handling the business to prepare me to handle properly their business. These contacts frequently attract business to the firm.

When I speak of competition of other markets I mean

that all these markets have representatives out soliciting business for their particular market. That comes from all of the markets east of St. Louis and Chicago. St. Louis and Chicago solicit and endeavor to get consignments out of the fat territory. The amount of business which we get [fol. 660] out of this competitive territory varies from year to year. It may be that some of the other markets have been a little more competitive in their solicitations some years than others. The matter of solicitation is a pretty big factor on the part of the Stockyards Companies. They try to persuade the shipper that their market is the one to which he should send his livestock. The chief factors that influence a shipper to ship to Kansas City rather than to some of the other markets is the condition of the market and his information as to where he can get the best price for his livestock. He has some information on which he may form an opinion. Competition from other firms on this market takes the form of the exercise of every means at their command to satisfy their shipper. The most effective way to satisfy him is the price he secures for his livestock. I meet representatives from other firms from the Kansas City market when I go out on these trips. Some of them go around and see the same people that I do. I presume their purpose is the same as mine, which is to get what information they can, and get what business they can.

The feed yards is an advantage to us as it is an advantage to the shipper that we can better serve his interest. There is no advantage to the commission firm except that it affects the market from the standpoint of price. When we order a shipment out of the feed lot, it is entirely our consideration is governed by the interests of the shipper and not our own interest. I cannot think of any advantages that there are to the commission firm as [fol. 661] far as operations are concerned. If a large consignment were thrown on the market all at once instead of being eased into the yard over a two or three day period, it would affect the market to the extent that it would hamper our operations. We receive a great many consignments containing several carloads belonging to one owner. I don't think during the past year that we have received a consignment of over 8 cars of double decks belonging to one owner. They were mixed fat and feeder lambs. I sold all of those myself.

I do not know what percentage of the sheep in this country is fed by packers. I think the number that Cudahy has out on feed this fall bears a very important relationship to the receipts at this market during that time. That operation affects the cost of operation of the commission business because it lessens the volume of our business from these sheep that might be fed by individuals and shipped back to the market. I think that the sheep that are bought direct on the range by the packers are more of a factor because they are in large number. I was able to handle conveniently the 8 double decks which I sold one day this year.

Recross-examination:

Supply and demand make a market. The more buyers we have, the more active our market. It would depend entirely upon the needs and wants of the buyers whether we would be in a stronger bargaining position, if we had a [fol. 662] fairly good percentage of the sheep that come to this market on any particular day.

Redirect examination:

On my last trip I met a man who is feeding some 10,000 lambs, and he has a loan at the present time from a finance firm here in town, but had made application for a Government loan through their recognized outlet for these loans. He said that the time was growing short and if he did not get the money pretty soon he might not take it, to save the 2 per cent that he would save, and that if he did not get it, he would let me sell the sheep, but that if he did get it he was compelled under his contract to ship them to one of the representatives of the National Livestock Marketing Association.

Recross-examination:

That is the only particular example in regard to sheep that I know about from my own experience.

Whereupon the witness was excused.

WALTER A. LANDIS, a witness called by Respondents, after being duly sworn, testified as follows:

I am a farmer and feeder living at St. Joseph, Mo. My farm is about 3½ miles from the stockyards at St. Joseph. It is about 65 miles by rail and 50 by truck from Kansas City. I have business with respect to the selling or purchasing of livestock both at Kansas City and St. Joe. I am here at Kansas City to buy some feeding cattle. I bought one load [fol. 663] and I wanted three. I had a commission firm buy them for me. I would not buy them for myself. I understand the charge is $15. We started out about 9:30 this morning and got in at quarter to one. I consider the charge of $15 a car very reasonable, because I think the knowledge of the man who bought the cattle for me was enough better than mine that I saved a good many times the commission, to say nothing of the work. I have sold a few loads in Kansas City and quite a few in St. Joe. I have always shipped by rail to Kansas City. I determine which market of the two I will patronize by getting an appraisement from each market. I usually get the representative of my commission firm here to look at the cattle and my commission firm in St. Joe to look at the cattle, and whichever market shows the better demand for my kind of cattle I use that market. It is my experience that the demand as expressed in price varies upon these markets as between the different grades and qualities of cattle from day to day. I don't feel myself competent to keep in touch with these changes. The market may be quoted 50¢ lower on steers while my particular class of steers, in so far as there was a surplus in number and lack of demand would sell a dollar lower, and the radio or the market reporter agencies would not fully explain that point. I believe it has made me quite a good deal of money to have a representative of these commission firms appraise the cattle immediately before shipment. I feel that the competition between agencies in the services is of great advantage to me. [fol. 664] The more anxious a fellow is for your business, the more he will do for you, and the more he will do for you the better posted he keeps you, and the better posted he keeps you the better chance you have got of getting it. That is really the reason I want two fellows there to check upon each other, and to keep me posted. Each one knows that the other is there for my shipment. As a shipper of livestock I hope that situation will continue to prevail.

From the standpoint of the producer, the more market

agencies compete with one another at these two markets, the better for him. Whether the situation would be an advantage to the market agencies, that is their business. I would not hesitate at all on the commissions when I get the services. A nickel a hundred on a load of cattle will more than pay any commission. I don't think it is particularly advantageous to market agencies to have competition on these markets, but it certainly is to the country. The competition is pretty keen between St. Joseph and Kansas City in the 50 or 60 mile stretch of territory between them. I ship to the market where I will be able to get the best price. An increase or decrease of 10 or 15 per cent in the commission charges would not influence me as to the market to which I would consign my livestock.

[fol. 665] The appraisal service is one of the most important features in connection with the entire service rendered.

Cross-examination:

I operate a 160 acre farm. I have been operating it for ten years. Sometimes I feed heifers, sometimes mature steers, and sometimes cow stuff. I have not been shipping hogs to the stockyards for a couple of years. I ship sheep only to St. Joe. I did not buy any cattle on the St. Joseph market in 1929. I sold 9 carloads of cattle during 1930. In 1929 I bought two cars on the St. Joe market, and the rest of them here at Kansas City, but I marketed four cars on the St. Joe market and three cars here. In 1930 I bought 7 cars at Kansas City and sold 9 at the St. Joe market. I sold no sheep at St. Joe in 1929, but I sold 25 head in 1930.

I was in the livestock commission business at St. Joe until January 1, 1927. I was a part owner in the Great Western Livestock Commission Company. It is not in existence now, and I am not interested in any commission firm now. I was in the commission business from 1919 to 1927. Last September I was here and bought 5 loads. We were practically all of one day and a half of the next making the purchase. The buyer was with me all the time. Another man was with me at the time who was looking for a different class of cattle. I would not say that was the average time required, but it is very often that long.

I would not object if the commissions were twice what [fol. 666] they are now, if I felt that I was making money

by paying them. If I felt that what I would save by employing a commission firm was more than I paid him, that is all I am concerned with. That is what I mean when I say I think the buying and selling commissions are both reasonable. Sometimes I cannot get just the kind of cattle on the St. Joe market that I want, and sometimes I can get a better price on the Kansas City market, in view of the quantity that is here. My selling and buying are done by the so called old line firms. I used different firms. My business is practically confined to two firms on each market. I have two firms instead of one because it is a proposition of competition. If I split my business I will get better service. I have the opinion of two men on the grade of those cattle and on their value before they are shipped to market. Very often I have two men come out and look at them from each market. For the past three years I have made it an invariable rule before I ship to have a man come from each market and appraise my cattle, and sometimes I have two men from each market. I regard that appraisal service as very much worth while to me. I don't think all shippers have that done before they ship. It is not of any value to the man who does not take advantage of it. I would have no objection to paying a separate charge for that service, if the charges *is* not too great in addition to the present charges, compared with what I figure the results would be.

I do not know how much it costs a commission man at [fol. 667] Kansas City to sell a car of my cattle, or how much it costs to buy a car. I expect it would cost some firms more and some firms less than $15 a car. When I speak of the rates being reasonable I have reference to what the service is worth to me. Lots of times commission men will know that I have cattle on hand, and I presume wanting my business they will come out and look at them without any invitation. They very seldom tell me what to ship. It takes a commission man anywhere from an hour to two hours to appraise anywhere from 2 to 5 carloads of cattle on my farm. Don't understand me to say that it would take a man an hour and a half to make up his mind what a load of cattle would bring, but ordinarily they are on the farm about that time. The weight of the cattle which I sell varies. I sold my cattle this year when they weighed 1,125 pounds. I ship 20 and 22 in a car. I have shipped

them as low as 800 pounds. I have shipped heifers weighing as much as 625 pounds. Ordinarily they would run about 38 to 42 in a 40 ft. car. The 800 pound cattle would run from 30 to 34 in a car.

I was engaged in farming before I was in the commission business. I was the office manager. I did not sell any livestock. I don't want to borrow money from any commission house.

Redirect examination:

No representative of the Cooperative Association known as the Producers Commission Association has solicited my [fol. 668] business. Assuming that the Producers Commission Association gets money through the Farm Board to loan on livestock, and in making the loans it is required that every person to whom money is loaned on livestock sign an agreement to consign that livestock only to that one particular firm, I would not consider that good business from the standpoint of the shipper because I would want to feel perfectly free to market my cattle when, where, and through the agency that I thought would make me the most money. I would think that the commission firm does a great deal more to increase the producer's net income through their earnings of the commission for selling the cattle than they do when they secure the loan for them. I have no interest in this matter at all. I am merely giving you what information I have.

The cattle that I bought today averaged 828 pounds, and there were 32 steers in the load.

Recross-examination:

My percentage of net profit will vary. If you strike a catastrophe, like we struck last summer, cattle will show a loss. The first two loads I bought this fall cost 7¼, and sold for a dime. They weighed 902 pounds when I bought them. They showed a profit of $1,048, net, after taking out the cost of feeding and handling. The last three loads of cattle netted about $1,200. In figuring my cost I did not figure in any interest on the value of my farm, nor salary for myself. Whatever profit there is, is my income for interest and management of the farm. Before I figure any profit at the end of the year, I figure my invoice value of

[fol. 669] my farm, implements, livestock, and feed, and figure interest on that.

Whereupon the witness was excused.

CHARLES J. KEMP, a witness called by the respondents, after being duly sworn, testified as follows:

I am jack pot man for the Swift and Henry Livestock Commission Company at the Kansas City Stockyards. I weigh the odd cattle, 1, 2, 8 or 9 head bunches as they are cut out of loads and have to be sold separate. I have been with Swift and Henry over 13 years. Before that I worked for the Stockyards Company about 6 or 8 months. When I started with Swift and Henry I helped in the jack pot alley where they handle the cows, stags, bulls, heifers, and mostly she stuff. I went there in June and did not weigh any jack pots until the coming January. We are supposed to be at the yards at 6 o'clock, but some mornings I am late. When we get there we put on our yard clothes, go out to the alley, and I get the night yarding from the head yardman. The head yardman has the yarding of all the loads that come in during the night, and he has it down on his books. He gives me the stuff that belongs in my alley, and I make a written memorandum of that in a book. I work out in the weather.

Then we commence getting the stuff over into the butcher alley, and as soon as one of the salesmen comes we commence sorting. We have three different alleys there and this stuff coming in at night is supposed to be yarded in the dryest and best pens they can find. It might be in any one [fol. 670] of the three alleys. We might find a load of cows and heifers in our grass steer alley or the fat steer alley either, and then they have to be taken over to the butcher alley in the morning. I have another boy who works with me. The cattle come in billed in a man's name, and they are yarded in a certain pen, and the block number and the pen number is on his book. He gives that to me. If it is a plural ownership load, the cattle would all be yarded together. If there is not a letter or telegram on them, where there are different owners, there is usually somebody with them, and if there is nobody with them, sometimes they are

painted or slipped, and we have all that to watch out for.

In the fall of the year we commence yarding cattle down there about 6 o'clock, and I have weighed and yarded and still yarding some more at 4 or 5 o'clock in the afternoon. The trains are liable to drop in any time. We usually have certain pens to sell the straight single ownership loads of yearlings out of. If they have to be sorted, we usually sort them up into smaller pens. The salesman works with us in this yarding, if he is not busy. When he gets so busy selling stuff that he cannot get to us to help us sort, then one or the other of us will do the sorting and the other will hold the gate. We count these bunches of cattle as they move out of their pens to ascertain the number of head and see if it corresponds to the number of head that is given to us by the head yardman.

[fol. 671] We place the straight loads in an advantageous position so that the salesman will lose no time in showing them to the various buyers. If we discover any throw out cattle, they are cut out and yarded in small pens. Usually a load of calves coming off the range will contain some steer calves and some heifer calves. We cut out steer calves and then we cut them for weights. The steer calves are cut together, the lighter steer calves are cut together, and then the little light veals which are there. If they are light enough for veals, the heifers and steers stay together. The heifers are also cut off for weight. After we have finished with the straight loads, we commence on the mixed loads. The calves and bulls are taken off first and separated. Then we sort the cows, taking the canners away from the fleshier cows, and the cutters are cut away. If there are heifers, they are cut away, and if there is any ownership on them, we cut for ownership. If fat steers are in these mixed loads they are cut off and sent around to the steer alley.

The stock cows and stock heifers are separated. If there are just a few stock cows, sometimes they are left in with the fat cows, if we are crowded for pens. We start the feeding men out at 6:30 or 7:00 o'clock. I attend to the feeding in the butcher alley: I tell him how many bales to put to the pens and what pens to put it in. We water some of these cattle as we go along, where they are fat cattle and dry. We have to fill the pens full of water and cut off 8 or 10 head at a time and let them get in and drink, [fol. 672] and when they get through push them out and

put some more in. The drive in cattle commence coming in before we finish sorting the rail consignments.

I have seen the butcher cattle salesman down at the alley lots of mornings at 7 o'clock. He is there before we get through with this sorting. It is usually around 9:00 or 9:30 when we get through sorting the first run of cattle. The buyers begin to arrive in the alley before that. If we are up with our sorting and watering and feeding when the trading starts, I go along and open the gate for the salesman and assist him in any way I can. The two of us that work in the butcher alley check our books against one another to see if we both correspond.

Cattle are sometimes marked with brands. We see cattle that are marked with shears or paint, or ropes and wire around their necks and clips on them. We use yellow greased chalk to do our marking. If we have a load that comes in that has several owners, we find out which owner has the most cattle, and we don't mark his before we mark the other people's cattle in there. We keep a record of the marks in our yard book during the day. Before we have done all these things some of the cattle generally have been sold; even while we are sorting or watering a load of fancy heifers or fancy cows, something is sold, and the salesman will say he has a load that he wants weighed. We drop everything and go and weigh these and come back. My worry is over after they go on the scales and I have [fol. 673] gone in and told the weighmaster whom they go to, and the foreman on the outside.

High line cattle consist of straight loads. In the butcher alley after the salesman has sold 10 or 15 drafts of stuff, he will holler at one of us boys that he wants to get out a jack pot. One or the other of us will quit whatever we are doing right then and go and receive these cattle and get them ready to go to the jack pot. He opens the pen and goes in there and tells you which cows go to a certain packer. He points them out to us and we throw them out in the alley. He will go to the next pen and the same performance is gone through with. We get all the way from 5 to 20 drafts in this pot, and we take them up to the jack pot and sort these out to where they go. These cattle in the jack pot belong to different owners. We know who the owner is, and the animal, and whom she goes to. I don't know the price but I do know the identify of the animal

with respect to both seller and buyer. No record or written memorandum is made of it at the time. We carry that in our mind until we get past the scales with the cattle.

There are four big packers down there and each one of those has 7 or 8 different pens that they yard their stuff in, and then there is any number of traders down there and we have to remember their name and whom they trade through. In one jack pot you might have 7 or 8 owners. I have had as high as 20 bunches and there might be 25 or 30 owners represented in them. Everybody weighs by turns [fol. 674] and you have to wait your turn at the scales. If it happens not to be your turn and congestion develops in the alley, you just have to wait. As you take each pot up there, you sort it in little pockets next the scales.

We get the scale tickets with the owner's name on them and the written weight of the cow and also the stamped weight. We put the sex on the ticket and then we go back to the salesman and he calls the price to me and I write the price in.

The congestion in the alleys will not last over an hour or an hour and a half at any time. The market opens at 8 o'clock and as soon as they get enough cattle sold to start a pot, we keep that up until we are through or until they have sold all the cattle they can sell. I sell bulls. If there is a fancy bull in the load sometimes the butcher salesman will sell him. I just go down and look at the bulls and price them to the buyers. If I think he has bid me the market, I sell them to him and, if not, I will try somebody else. Sometimes I consult with the other salesmen on the prices of them but on the odd bulls each of us usually knows by the way they bid whether the market is going to be higher or lower. The average jack pot will run from 35 to 50 drafts. Any time he has enough cattle to start to the scales, we start a pot. I have not weighed any jack pots after dark on the last few years since this last scale was built. Prior to that time, I did. The erection of this scale has speeded up the weighing.

[fol. 675] During the first two or three days of the week in the fall of the year it is usually 6:30 to 7:00 o'clock before we get through. On one occasion I weighed either 225 or 275 drafts out of one pot. The first pot I ever took to the scales I took only 5 drafts and I had a

lot of trouble remembering all those. In a few days I got where I would take 4 or 5 more and just kept on and it was 6 months before I could take 25 or 30 drafts and get them right. If you don't get them right, you have to go and get the animal, have it reweighed to the right people, and if we weigh two owners together we have to get both of them. The shrink causes quite a bit of trouble. The owner has to take the second weight, if we weigh two different owners together. In the interval the cow will shrink. I think the efficient butcher yardman or jack pot weigher is an asset to a salesman. The salesman wants to be sure that these cattle are yarded to the right packer. The yard company cleans the pens. If the yard company does not get to us often enough to keep them clean in rainy weather and times like that when we are not so busy we do our own shoveling. We check our yard books after we get through with the first sorting of the morning. After we weigh these cattle these tickets are sent up, but we don't check on them any more until all the tickets are in that night. I hunt up buyers for the salesman. If there is some buyer that is in a different part of the yards, I go back to look him up and have him come over there. If any cattle are unsold at the end of the day we get the count on them [fol. 676] and the ownership. We write them down in the book.

After everything is over we go to the office. The tickets are handed to the bookkeeper and figured up, and we check the number of head against the unloading bill that comes in on the train, and then we check the ownership against the manifest that came by mail, or the ownership that was given somebody in the yards. Some nights I leave the office around 5:30, and some nights it is 7:30 or 8. I have left there at 11:30.

Cross-examination:

The common type of cattle which comes in the butcher class is the white faced cattle. That class includes cows, grass fat canners and cutters, calves and bulls and heifers. We have butcher cattle the year round. The heavy run commences about the first of August and runs until about the first of December. In the fall of the year when we are very crowded for pens I might leave two or three different grades of cows together because we have no other pens to put them in. We don't want to put them in the

alleys or in the back pockets or let them go without feed or water for awhile. If we have plenty of pens we usually cut our stuff up for grades, to a certain extent. The extent to which we do that is dependent somewhat upon the number of pens that are available. We usually commence watering around 7:30 or 8:00 o'clock. It is owing to how cold the weather is. With a load of 35 fat heifers we try to pick three pens for them and cut them up. We let each one of them have all the water it wants until it turns away [fol. 677] from the trough before we run it away. We must stand there and wait until they get through. Sometimes we put the whole load out in the alley and start the water in the pens and let them get filled up, and then we will cut off 8 or 10 and let them run in. After they have had their fill of water, we put them all back in one pen. Two of us jack pot men are over there and both salesmen help us when we are busy. Swift and Henry gets a good many butcher cattle. We always have a lot of jack pots but I don't believe we get as many as we do of the stockers and feeders.

The first three days are the busiest days and Thursday and Friday are just fair. We stay down there pretty late during the first three days of the week. The next two days we stay until about 4:00 or 4:30. On Friday we get out a circular and it keeps us around there until 3:30 or 4:00 o'clock. We are just supposed to show up and if anything comes we are to be there to take care of it. The long hours are in the fall of the year, when the big runs are coming. We are not supposed to leave there even in the light seasons until a certain time of the day because anything could come up with a commission firm. In the rainy seasons we do quite a bit of cleaning of the pens. We just push the manure under the mangers so that the center of the pen will be fair shape. The Stockyards Company comes along later and cleans it up. If we have had a big day sometimes we are an hour or more checking against [fol. 678] our yardbook in the office. It does not take very long during the lighter periods.

Redirect examination:

These bulls that we handle are sometimes rather unruly and when we get several of them in a jack pot it delays

the operation of the weighing. You have got to be very careful when you are handling bulls. Western cows are usually more wild than native cows. We are on foot and we have to watch these cattle in order to avoid injury.

Recross-examination:

Bulls are not put in with anything but calves as a usual thing. Bulls are always sold on a weight basis. In the fall of the year we have one horse in the butcher alley. The calf salesman will ride a while and if he gets tired and the other man needs the horse, he will get off and let the other man use him for a while.

Whereupon the witness was excused.

E. R. Ransom, a witness called by the Respondents, after being duly sworn, testified as follows:

I am a chute man, running trains for John Clay & Company at the Kansas City Stockyards. I receive the cattle at the unloading chutes at the stockyards. I have been employed by John Clay & Company over 8 years. Before that I was with Swift & Henry, and I have worked at the stockyards 12 years. I was running the chutes for 2 years [fol. 679] for Swift & Henry. Before that I was employed by the Kansas City stockyards company in counting cattle, following cattle, and feeding. I was raised on a farm in Arkansas. When I came to the yard I found that it took time to become accustomed to the routine of the work for the Stockyards Company. I would say that it took me about 12 months. I had the help of Swift & Henry's men or I could not have performed the work. I was green at the work and it all took me 8 or 9 months to get more accustomed to it. I was not trusted. I was working under a man and I did what I was told. I worked under the direction of this other chute man the whole 2 years. When I first started in it took me longer to perform the same operation than it takes now. When I started in I was not acquainted with all the foremen of the Stockyards Company and I was not posted on how to get from these unloading chutes to our pens. At that time it would take me maybe 2 hours to get to our pens from one of the unloading docks where now I can make it from 15 to 20

minutes by knowing all the routings. Knowledge of these routings comes with increased experience in my work.

Mr. Stewart, who was in charge of my work, would give me instructions. He would tell me that we had a load of cattle unloaded at a certain dock, and he would tell me how to go and get this load of cattle.

I come in contact with some of the shippers in the course of the performance of my duties. They are always very excited about keeping their livestock from being mixed with other livestock. It takes time to become suffi- [fol. 680] ciently experienced to get acquainted with the different grades and breeds of cattle. I get down at the yards from a quarter till to a quarter after six. I go to the office and read the mail and find out the instructions on consignments. It takes me about 20 minutes to change my clothes and look over the mail. If I can get away I go back about 8 o'clock and take another look at the mail. I go to the train office where the Stockyards Company writes the bills on the tab. It takes me about 20 minutes to look over these sheets showing arrivals of consignments of livestock. I see our night man there. As a rule those cattle will be yarded by that time. The division man of the Stockyards Company will turn the cattle over to us then. The Yard company's man will not follow them there after they yard them.

Instead of just going in front of the cattle and leading the way, we have to take complete charge of them. We are responsible for them as they are counted to us at that pen. If we should lose one it is on the commission company. When I am in the train office I make a record in my book of these consignments and car numbers. If there are 3 or 4 boys ahead of me I have to wait until the foreman turns them out, and if they don't happen to have a man following the cattle, we have to wait until they get men who come back from different places where they have followed cattle.

I believe the tracks are a mile long, or better. If there are three loads of cattle and they don't look alike, I will [fol. 681] run them separately. If we have two loads of one class and another load of another class, I will run the two loads together and the other one separate. The Stockyards Company puts men between the different loads. I can get a load of cattle to the pens by 5 or 6 different

routings. If I am blocked, I can make time by going these routings. I never learned that until I was there 2 or 3 years, and now I have learned these routings and know about the best way to go. I can get a load of cattle now in 30 minutes whereas when I first began it might take me two hours to get a load. They have had the block maybe as long as 2 hours. That would occur during the busy season when we have say 30,000 cattle. We have had lots of customers feel as though we had laid down on the job by not getting their cattle through earlier. They want their cattle to get over and fill, and if the market should be good in the morning they want them on the market early.

In the case of outbound shipments, I have to see the order buyers first and get my shipping order instructions from them, I mean the order buyers employed by our firm. Then I go to our stenographer and have her make those orders out on little pasteboard cards. Sometimes they show the right routing and road, and sometimes I have to go to the railroad and find out the best routing and the cheapest rate. After the order is made out I take it to the railroad on the 8th floor, and I sign the contract there, and on a long haul I sign a 36 hour release. Then I take the red sheet to the Government office and answer the questions. They ask if they are bulls, cows or steers. Cows [fol. 682] going to certain states or certain count-s have to be tested or branded. I find that out from the Government. After I get these orders in I go down to the shipping division in the north end of the yards. I get the cattle together and get them up to the scales and weigh them. Then the yard company will deliver them to me to take to the train in order to get them out.

There are occasions when the purchasers desire the branding, dehorning, or vaccination of cattle. I handle it all for our company. The other day I had a load of cattle branded that I thought was going to Illinois. After I had them branded they went to Ohio, and we lost the branding on them, which was ten cents a head. It is very important to be accurate in regard to the destinations that we give the railroads and the Stockyards Company with reference to these cattle. Mistakes are not like they were when I first started. I have not made the mistakes that I used to. In an ordinary business day of fair volume I

turn in fifty to sixty pen numbers. I could turn in one pen number wrong and cost the company two or three hundred dollars.

I have had as high as 40 or 45 loads of cattle held over because the order buyers have not been able to fill their orders in time to have the cattle shipped off the market that day. I have to move those cattle fifty to one hundred yards where there are watering troughs and mangers in the 75 block or take them to our alley. I have to have each consignment separate and be very careful not to get [fol. 683] my accounts and pen numbers mixed.

I follow the feed on the freight to each customer. The yard company has a ticket that we mark the feed on and where it is going. I mark on that ticket "follow," and put the owner's name on this ticket. It goes to the freight office of the Stockyards Company, and there they follow it out. In that instance the feed charge is collected along with the freight charge at destination. If we get the feed on the wrong customer, we have to refund the cost of the feed. I have seen difficulties of this sort occur many times. Increased experience assists me in these difficulties and losses.

Cross-examination:

I started to work for the Stockyards Company in the capacity of driving cattle, following the cattle after train runners. I worked at all the docks. After 9 o'clock I was sent to the scales and drove cattle from the scales to the packing companies. I went to work at 6:30 in the morning. When I was following the catt-e I did not even know the different train runners. I have often followed cattle and got lost and did not know how to get back to different parts of the yards. Maybe I would never get back where I was supposed to be. I would just go to one of the other tracks and go to work. I was supposed to work at a particular track, wherever the boss sent me from the train office. I followed the livestock until it got in the pens and handed the commission man the ticket.

[fol. 684] The older I got I got a better position, and finally got a division where I counted cattle. I worked as a follower of cattle around 6 or 7 months. As a division man I was stationed at block 9 and counted cattle that was sent down over this dock to the traders. Then I went to

sorting jack pots, where there were three or four different traders thrown into a bunch. The Stockyards Company could not furnish two men to send one head at a time, they had to send ten or fifteen, and therefore they would jack pot them. Then I went to the sheep house and counted sheep and yarded sheet. Then I went to work for Witherspoon for three or four days a week as an extra man. Then I worked for Swift & Henry two falls. Then I went to work for John Clay & Company as a helper down in the alley. I helped the calf man, weighed calves, and held gates while he sorted them. I worked in that capacity about a year and then I went to the chutes. John Clay & Company had three train runners and I worked under them. I am now head train man for John Clay & Company. When I came with John Clay & Company I think they got more business than they do now. I have been train runner for John Clay & Company for about 5 years. Two men that were running trains when I came with John Clay & Company were let out of the business because they were unsatisfactory. One of them was retired.

In the instance where we lost $500 on a shipment, I was partly responsible and the order buyer was partly responsible. During the period that I worked for the Stockyards Company and held different positions I got more pay as I [fol. 685] went from one position to another. When I started to work for Shift & Henry I got higher pay than I received from the Stockyards Company. I went to work for John Clay & Company at about the same salary. I gradually got raises. As I became more efficient it was recognized in the way of receiving larger salary. I have had a raise every year up until this year, ever since I have been with John Clay & Company, and sometimes during the year.

I have to weigh back cattle that we have bought which have lump jaw or are blind or cripp-ed. I also have to weigh back in the case of over loads, and have ordered cattle out as late as 11:30 at night. Ordinarily they are billed out around 6 or 7 o'clock in the evening.

I am down there until most of the livestock is loaded. The Stockyards Company does the loading. I am supposed to drive the cattle up to the chutes when they are to be branded, dehorned or vaccinated. We have one new man and they tell him what to do before he does it. The firm has to keep responsible men in these positions to prevent

errors from happening. I do not make as many mistakes as I did when I started, but I still make some. I do not know how many I made this last year. I judge I made five or six. They cost around $3.75 a car. The reason for these mistakes was having a new customer, not knowing the correct name, and we fed the cattle in it and failed to follow out on the freight charges. I believe I make more mistakes on the feed than anything else. I made mistakes [fol. 686] on pen numbers. I mixed 22 cars of cattle that had to be loaded, unloaded and reloaded. I made mistakes on freight rates. I believe I made one or two last year. The firm does not make me stand for these mistakes. I feel I qualify for my job.

Redirect examination:

Order buyers for our company can buy cattle as late as they care to. The time is determined by whether or not the day is in the fall of the year and it is light enough so they can see. My company during the course of the year's business receive mixed shipments of livestock containing cattle, hogs and sheep. When a consignment of that character is received it requires two men to handle it. I might go to the chute and take possession of the cattle and Mr. Wilson would also be there and take possession of the hogs. During the first four or five days of the week I leave the yard all the way from 5 to 7 o'clock. I get away early on Saturday and at 4 o'clock on Friday.

Recross-examination:

My employment requires me to handle our outbound stuff and I cannot do it without staying there until 5 or 6 o'clock in the evening, and sometimes seven. During the past two years there has not been anything unusually difficult about my duties.

Redirect examination:

The reason I am not blocked as much in recent years as I was when I first started running shipments from the chutes is due to the fact that I am better acquainted with the yards.

[fol. 687] Recross-examination:

When I get blocked in the yards there is a disadvantage to the shipper because it prevents him from getting a fill

on his cattle. We have a claim agent that handles the claim business. He is employed by John Clay & Company.

Whereupon the witness was excused.

HARVEY M. PYKE, a witness called by the Respondents, after being duly sworn, testified as follows:

I am employed by the National Livestock Commission Co. at the Kansas City Stockyards as head yardman. I have been employed by that association since 1918. I have charge of the yard men who see about the work, the counting, yarding and feeding of cattle, keeping the pens clean, seeing that they get water, taking care of cattle in general, making notations of crips and deads, seeing that the cattle get over to the pens from the chutes, helping to sort, and seeing that the cattle go to the scales to be weighed. When cattle are held over at night, I take charge of the feeding of them, the yarding of them, and see that they are put in the proper places and fed properly. I have been head yardman about 6 years. When I first went to work for the National Livestock people I had charge of the stocker steer alley and the calf alley. I weighed stocker steers and calves, helped sort them and kept track of them.

Prior to 1918 I was employed by Clay Robinson & Co. I [fol. 688] lacked 10 days of being there 10 years. Prior to that I worked for the Kansas City Stockyards Company, driving a feed wagon and feeding cattle. The experience as an employee of the stockyards company was of value to me after I went to work for the livestock commission concern. I got pretty well acquainted with the yards. When I quit driving the feed wagon there was not a pen in the yards that I did not know. In a way that experience proved valuable to me in my occupation as a jack pot weigher for Clay, Robinson & Co. It did not have much to do with the weighing of jackpots. My experience also familiarzied me with the various grades and classes of cattle which arrive at the Kansas City Stockyards.

I was raised on a farm and had been associated with the different kinds of livestock. When I went to work for Clay Robinson & Co. I immediately started to work in the jack pot alley. I held gates, turned on water, shook the hay, and familiarized myself with the jack pot part of it. My activities were supervised by another employee. I think

it was about a year before I took any jack pots to amount to anything to the scales. I might have taken a few drafts of cattle to the scales earlier. I weighed jack pots cattles for Clay Robinson & Co. about 5 years. I feel that during the first year, because of the training than I got. A man taking a jack pot has to know the different classes of cattle and the difference between cattle that go to different places, and you have got to know the cattle that you get out of [fol. 689] certain pens and whom they belong to. You have got to train your memory in order to do that. Back in those days the local packers did not have as many different pens in which they had their livestock weighed as they do at the present time. There is a big difference now because at that time the packer would sort their own cattle after they would buy them but now each packer buyer has probably 10 or 15 numbers and he grades his cattle, whichever way he wants to weigh them and you have to weigh your cattle according to those numbers so that when they go to the pens the packers will not have to sort them.

I arrive at the yards from quarter of six to six o'clock in the morning. The first thing I do is to go to the train office, that is where all the bills come from, the railroad, and the yard company tabs them up there.

The night man goes to work at 6 o'clock in the evening and he does not go off duty until I get there. I check up with him on all consignments received during the night. Unless I get these tickets before I see him, he gives me the pens in which the livestock is yarded. The night man puts the pen numbers on the ticket. We have a letter file concerning shipments coming in. I have always contended that no two men's cattle looked alike. It is necessary for the train runner to have knowledge that will enable him to detect the difference. It frequently happens that two loads of livestock belonging to two different owners will come billed in one owner's name for the reason that one of the owners may not be able to accompany the livestock [fol. 690] to market.

My next job is to go to the yards and count all the cattle that came in during the night. I turn them out of the pens and count them. The division boy who has charge of certain parts of the yards and of unlocking for the yard company is the only one that has a key. He and I count the cattle together. They have to check with these tickets that we get from the chutes. If they don't check then we have

to go to the claim agent to get them straightened out. After we get through counting cattle we send the cows to the cow alley, heifers and cows to the same alley, stocker steers to the stocker alley, and fat cattle to the fat cattle alley. As long as there is any sorting to be done that we can do ourselves and have time to do it, we do it before the salesman comes out. We take the calves off and send them to the calf alley.

I have 4 or 5 boys that work with me. I make a written memorandum of all instances where there may be a cripple in the consignment. Prior to the establishment of this Kansas City Cripple Association there were about 15 fellows around the yards buying cripples. The chute runner would sell them to these buyers. Sometimes he would get what they are worth, and sometimes he would not. The animals that die in our pens are sent to the Standard Rendering Association, which has a wagon over at the yards all the time.

Our organization employs two train runners. The train [fol. 691] runner is supposed to count them into the pens, but I always count them over. The big part of the day during which the shipments arrive to our organization is from 2:30 to 3 o'clock in the morning until 10 o'clock in the morning. It seems to me that they come in all times of the day. I help to sort and when the salesman first comes out I give him the ownership, the number of cattle in each pen, and then I help him sort, water and feed. If the hay is not shook up, I see that it is shook up. I spend some time watering livestock and cleaning pens. The salesman does the sorting and the yardman's job is to hold the gate.

Sometimes we receive bulls in consignment to our firm. They are more troublesome to handle than perhaps some other class of cattle. We also handle Brahma cattle. They are a ticklish bunch and hard to handle. I keep a record of the hay that is fed in my particular department and turn the record in every night. I make a report to the office man as to what I feed each man's livestock.

During the past 5 years I have not been weighing jack pot cattle. If I were assigned to jack pot weighing I don't think I could engage upon that occupation with as much efficiency as I had during the time that I was in the employ of Clay Robinson & Co. I have not kept my mind in trim for weighing jack pots. I think I could acquire it after some time spent at it. If a salesman is showing cattle and

he wants a buyer or somebody that he wants to come over and look at some cattle, he will probably send me after him, [fol. 692] or they may want me to take people to the order buyers, people that come here to buy cattle. I go to the bulletin board in the Exchange Building to obtain information for the salesmen on other competitive markets.

I do some work in the office. We enclose circulars and every night I check up with the office man and see that our customers get the right number of cattle. It does not take very long because we have good men in our alleys and they don't make many mistakes. If there is a mistake it takes a long time sometimes to correct it. We clean the floors of the pens nearly every day. The cleaner the cattle are, the better they look to the buyer. At this time of the year we leave the yard between 5 or 6 o'clock in the evening. Last fall I think I worked as late as about 10 o'clock. I am required by my employers to be present at the market on 7 days of the week. I come down on Sunday to receive cattle, and see that they are properly taken care of, fed, watered and bedded. In years gone by the buyers used to get out there between 8 and 9 o'clock, but nowadays they get out around 10 o'clock. They get out and ride around a little to see what is here, but they don't start to bid sometimes before 11 or 12 o'clock. All depends on the run of cattle on the different markets. There has been a slowing up in the way in which buyers commence their active trading operations. There are times when consignments of cattle to our organization are not sold on the day of arrival. If they are not sold we have to put them away and see that [fol. 693] they have plenty of room and if they are to be fed again, feed them grain, or do whatever is necessary to take proper care of them. The longest time that I remember of a shipment of livestock being carried over was two weeks. The owner was not satisfied with the price he was bid. At another time we carried a load of stags and steers a week, and we finally sold them and the man wrote back and complimented us on holding the cattle as long as we did.

There are instances in our organization where consignments of cattle are received, watered, fed, and sorted and presented to the buyers but not sold, and then forwarded on to another market. Two weeks ago Thursday we had a load of cattle from a man who was not satisfied with the price he was bid here and we held them until Sunday and shipped them out. We took them to the 75 block, which is

the shipping division and split them into two pens and fed them chops and hay and watered them every day until the time that they were loaded out. Feed had to be ordered every day. It does happen occasionally.

Cross-examination:

During the entire period of my employment by the Stockyards Company I worked practically all the time on the feed wagon. For about two weeks I followed the feed wagon as a helper. The man in charge of the feed wagon is responsible for whatever feed he puts out and the man that follows is only a helper. He just hands the bales to the man on the wagon when he loads and when they are un- [fol. 694] loaded. When they are feeding cattle he opens the gates and helps around in the alley. During the time I worked on the feed wagon my activities were confined mainly to the cattle division. I have supervision over the yarding of all cattle of all grades when they come from the chutes and after they are sorted the salesman tells us then where he wants them yarded. The knowledge and information which I gained while I was working on the feed wagon was a step toward what I am doing now.

I worked in the jack pot alley about 5 years for Clay Robinson & Co. Then I was sent over to the quarantine division and had charge of all the cattle over there. I was over there two years or more. We would wind up over there about noon and in the afternoon I would go out to the shippers. After I quit that job I went back to the fat steer alley for Mr. Reed, who was the fat steer salesman at that time. My duties there were helping sorting, feeding watering and weighing of cattle. I thought it was a promotion to get out of the jack pot alley. John Clay increased my salary three times while I worked for him. That was partly in recognition of my increased usefulness to the firm and partly due to the change in the cost of living. When I started to work for the National I received more than I did from Clay Robinson. It was considered a step in advance, when I went from the stocker and feeder alley to the fat steer alley. I was able to start in the stocker and [fol. 695] feeder alley for the National and assume those duties by reason of the fact of my previous experience. I think I worked in the fat steer alley about a year and a half or two years before I became head yardman. Five

men work under me as head yardman. The youngest one of those has been there about 6 years, and the rest have been employed a longer time. Since I have been with the National other firms have hired yardmen away from us. I guess that is because they get more money.

Packers require more specialized weighing now because it saves them a lot of work if they can get the commission men to do the work for them. That has been going on probably three years. They might buy a bunch of cows and say: "Weigh these to number so and so," and pick out another one and say: "Weigh her to so and so, and send her to another pen." The buyer comes into the pen and buys the whole pen at a price, and then gives directions with respect to weighing of the different animals.

I would rather work in the fat steer alley because we don't have so much hard work. In the stocker steer alley there is quite a lot of sorting. When we carry livestock over, we leave it out there in the pens if the weather is favorable. If not, we take it to the shed. On Sunday I stay down there until everything is reported in and the cattle are taken care of. Another yardman goes down there too on Sunday.

The matter of buyers coming out late to buy has gotten worse in the last year. I don't know whether they are [fol. 696] waiting for orders from Chicago or what they are waiting for, but they don't come out. The order buyers get out early.

Redirect examination:

My firm carried over livestock on Monday of this week. My firm did not sell a single load of fat steers last Monday. It carried over one load and a few odd ones on Tuesday. It carried over a load on Wednesday night. There is just as much work in the fat steer alley but it is not so strenuous as it is in the stocker steer alley. We handle more fat steers in the course of a year than we do of stockers and feeders. The yardman in the fat steer alley does not handle as many drafts of cattle as the man in the stocker steer alley. The fat steer consignments come more to straight carloads than the other classes of cattle. We are allowed 30 minutes at the high line scale, which is a straight bunch scale where anything over 10 head is weighed. At the jack pot scale we are allowed 55 minutes to weigh, and

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there are nine firms that weigh at this scale. If we have more jack pots than we can weigh in 55 minutes, we are cut off and we have to wait until our turn comes again. That is the reason that the jack pot man is so much later getting through than anybody else.

If the five men under my employ were to leave the National, I could not go out on the street and pick up men and put them in here and get the work done because they would not have the experience. It takes experienced men [fol. 697] to weigh jack pots and handle cattle. We have men down at the stockyards that work extra here and there, wherever they can get a job, and we could not put them in the jack pot alley and let them handle it the way it ought to be handled. It would take a long time to pick up men and train them to be as efficient as the men that are now working under me, and they would not all make jack pot men. It is not every man that can be made into a jack pot weigher.

Shipments came to market in larger droves when I worked for Clay Robinson & Co. than they do now. They did hardly any sorting at all in those big droves. I remember we had about 25 loads of cows from a certain outfit for three days a week for two or three weeks and we never sorted them at all. I don't think they ever come in here now but what they are sorted.

Recross-examination:

As near as I can remember, we had 28 loads of fat steers last Monday. We carried all of them over. All but one was sold the next day. We rec-ived 7 or 8 loads on Tuesday. The market was better on Tuesday than it was the day before. I think we carried over one load on Tuesday. We had four or five loads of fat steers on Wednesday.

Mr. Adams and Mr. Olander sell the fat steers for my company.

Whereupon the witness was excused.

[fol. 698] Mr. George W. Hobbs, a witness called by the Respondents, after being duly sworn, testified as follows:

I am general manager of the Farmers Union Livestock Commission Co., and represent that company in this pro-

ceeding. I have been general manager approximately two years. Before that I was cashier and office manager. I have been connected with that market agency ten years. Before that I was not in the livestock commission business but have handled livestock practically all my life. My activity has been confined practically all the time to office operations.

The Farmers Union Livestock Commission Co. is a corporation, incorporated under the laws of Kansas as a cooperative. It has been engaged in business at the Kansas City Stockyards since October 5, 1918. All of the members of the Farmers Union of Kansas are affiliated with this cooperative corporation. The Farmers Union of Kansas is an organization of farmers. At the time of the organization of the Livestock Commission Company the Farmers Union of Kansas had approximately 20,000 members. This membership has decreased at the present time. The Farmers Union of Kansas is affiliated with the National Farmers Union which has state organizations as members. There are 26 states that have Farmers Union organizations. Of the central states they are Arkansas, Oklahoma, Missouri, Kansas, Colorado, Montana, Nebraska, Iowa, Illinois, Arizona, Minnesota and the Dakotas. These other state organizations maintain cooperative corporations upon other terminal or cooperative livestock markets. They operate [fol. 699] at the National Stockyards, Kansas City, Wichita, Denver, St. Joe, Omaha, Sioux City, South St. Paul, Chicago, Milwaukee, and Sioux Falls. The houses at St. Joe and Omaha were established ahead of Kansas City. The ones at Chicago and National Stockyards were established in 1921. At Wichita in 1923 and Sioux Falls in 1928. These market agency cooperative corporations were established by these associations of farmers designated generally as Farmers Union for the primary purpose of handling the marketing at public markets, the livestock of members of those organizations. They established other corporations or organizations to handle different characters of agricultural commodities. I became acquainted with the agency at Kansas City in 1921. At that time we were not using the clearing house. I recollect that we used the clearing house in 1923, but I would not say whether it was prior to a certain date in 1923 or not. I have a recollection of the formulation of the so called Market Practice Agreement.

My Association subscribes to that agreement and since that time has enjoyed the facilities of the Exchange known as the clearing house, the hog dockage and inspection service. As I remember, it became a party to that agreement in 1923. Since that time this association has not complained of any lack of trading facilities at the Kansas City market.

In our type of organization we refund patronage dividends representing the surplus above operating expenses to member shippers of livestock. We have made such re- [fol. 700] funds during the period of the operation of this agency at the Kansas City market. Members of the Farmers Union of Kansas are of a great deal of assistance, all of the organizations are, in getting and maintaining our business. Each of those state wide organizations has a paper which it puts out each week, and they are constantly talking the marketing of their various commodities at any meeting of the Farmers Union. Members and officers of these parent organizations in the several states have applied their time freely to the upholding of our market agency business at Kansas City, as well as the affiliated corporations at other markets. The work of these parent associations and their membership has been of value to our organization. Our organization has established and developed livestock shipping associations at various shipping points. The Farmers Union of Kansas will go into a certain county and organize various locals all over the county. After they have thoroughly organized that county, they will write us and send us a man's name who might be interested in the handling of the livestock shipping association at these various points. We will immediately write the man whose name is given to us, if I or some other member of the force is not at any of the local meetings to get in touch with the man in regard to the possibility of a livestock shipping association. At these meetings we try to organize a livestock shipping association, select a board of directors, and hire a manager. Sometimes we get the job done in one trip; sometimes it takes two or three trips. Even after they are [fol. 701] organized we may have to go back on the date of their first shipment and assist in marking their livestock and getting it loaded. We have assisted in establishing as many as ten shipping associations in one county. Naturally we expect to receive the consignments of livestock that come from those shipping associations. That has been the prac-

tice of our organization since the date of its establishment. This work has been a determining factor in the volume of our business.

A large proportion of our business comes from such associations. In my judgment, the organization of shipping associations at country points as of December 31, 1928, had a value to our organization. Into the development of that organization there has gone the expenditure of a large amount of time, effort and money, on behalf of our own cooperative agency as well as members of the parent organization and members of that organization. It requires the effort of every one all of the time in giving service to these shipping associations in order to maintain this organization. It is very necessary that someone keep in touch with the manager of these various associations at all times to assist in handling his customers.

We have a paper which we publish called the "Co-Operator." It is published each month. We run a contest in the paper each month, and the shipping association manager who has as many as four loads in any one calendar month will get his name on the list, what we call an honor [fol. 702] roll. At the end of the year we select the three highest and run their pictures in our paper. The efficiency of a shipping association manager is most important in marking livestock. The work in the office is not decreased any at all. If the livestock in each load is marked properly, it requires practically the same amount of effort in the office as well as in the yards. It takes a lot of time in the yards to weigh a shipping association load if the livestock is not marked properly. We received a load of cattle with 113 cattle in the car and 91 owners. That takes considerable work to handle a shipment of that character. The only way that work can be cut down is to have the livestock properly marked, and it was in this case. They were mostly veal calves and they asked us to weigh the largest bunch together that sold at one price and they would prorate the shrink. They had individual home weights, and they prorated the proceeds according to the home weights. We prorate about 60 per cent of the cooperative shipments ourselves. I keep a man that does nothing else but prorate cooperative shipments. It requires a man of experience in that work in order to do it accurately and efficiently.

There is a service charge in our tariff for prorating. It is optional with the man-ger whether he takes advantage of this service. The development of a large volume of this particular type of business in one concern such as ours as [fol. 703] sists in promoting the economy of operations from the standpoint of office expense in prorating. I would say the amount of the charge is reasonable. It so happens that we keep a separate account of the prorating that is done on that job as applied against his salary, and the cost of the machine, depreciation, and so forth, and the cost of prorating to the shipper is not unreasonable. Shipping associations customarily make a charge to their members for the services which they render. Most of the associations at the present time charge 10¢ per hundred weight. I have never heard any objection among our members to the amount of charges which we collect for our services here at the yards. From the net return standpoint 1929's business proved to be the most profitable year. Since 1921 we have been able to make a patronage refund on each year's business, with the possible exception of 1927. Patronage dividends have ranged from 11% to 25½%. We paid a stock dividend but not a patronage dividend prior to 1921. Our books will disclose the refunds which we have made by years. I will get the record showing the gross value of livestock handled each year.

The rules and regulations which are set up in this market practice agreement are desirable and practical from the standpoint of market operations. My firm maintains a deposit of securities with the market practice committee amounting to $10,000. My association receives the earnings or income as it accrues from these securities. I am a mem- [fol. 704] ber of the market practice committee at the present time.

My organization maintains at Kansas City a radio market service. We broadcast from the Topeka station three times daily. The expense of that is distributed among the various state wide business activities of the Farmers Union. This interlocking organization of the Farmers Union in handling various sorts of agricultural commodities has been an advantage to our agency on this market. As an organization we get out a calendar each year that is paid for by five different business activities. It costs us one fifth of the amount that it would ordinarily cost to get

the same amount of advertising. Any time that a man is soliciting insurance for the Farmers Union Insurance Company and happens to run into a load of cattle, we are immediately notified. They carry literature with them in the form of advertising pencils or something like that.

As manager of this association I endeavor to economize in every way possible. The effort and money required to establish in a market agency the trained personnel throughout the yard and office is essential to the most efficient operation. If our organization were wiped out and I had to rebuild it from new material, I would say that we would be just like starting the organization again back in 1918. It is necessary to have trained salesmen that have acquainted themselves with your trade. All that we sell is service and salesmanship and the personnel of a force has a great deal to do with that. When a new man comes into [fol. 705] our office it takes time to get him acquainted with his task. In my judgment, we have an investment of value in our organization in our trained personnel. We could not develop our system and methods over night. It takes several years to work out a system like we have.

These records are very important and we have them figured out from a percentage standpoint, both on the distribution of expenses and distribution of income so that we can tell which department is paying and which department is not paying. We suffered a substantial loss at one time by setting a new man onto a task in connection with the office. I would say that I had a 24 hour day job. I try to get to the office every morning shortly after 6 o'clock, and stay there until the work is out at night. If we don't get these prorates completed, in time for them to go out in the mail at 9 o'clock at the postoffice at the stockyards, we complete them and I take them to the Union Depot. We don't close shop until all of the account sales are out and in the mail and checks for everything. There are times when we have long prorates on shipments of stock that cannot be checked out that night that are held over until the next day, but under ordinary conditions the business that comes in one day goes out the same day. Most everybody is in the office at work by 7:30 or quarter to 8. We have stayed at work as late as midnight, and I would say the first four days of the week we seldom get away from the office before 8 o'clock at night.

[fol. 706] At the present time I have four men in the yard department. They happen to be in the hog yards at this time, and they assist in the office work. They report for duty at 6:30 in the morning and stay until the office work is done that night. Recently I have employed another cattle salesman as an addition to our existing force of salesmen. I don't have any more cattle salesmen than I did in 1929, but I have changed their work. The man that I had selling fat steers has been changed to sell stocker steers and assist in purchasing livestock for customers and do field work. I have the best ability that I can get from the standpoint of salesmanship in the cattle department engaged in selling fat steers. We are paying the new salesman a good salary and I believe his work will more than return the amount of that salary to the value of service to customers. The salesman that I hired has been in the yards for 30 years. He has been selling fat steers for 15 years for one of the leading firms on the market. I think that it requires possibly not that much experience, but the more experience the better. We had a man in our hog department from the date of the origin of the firm until 1922 who received a small salary, and we received a small business. The business ran all the way from 30 to 60 cars a month. We went out until we found a man whom we thought was capable of putting our hog business to the front. He came to us at $6,000 a year in 1922. The business has increased until last year and the year before we handled practically as many hogs as any two firms on the stockyards. As I said before, we have nothing to sell but [fol. 707] service. If we have the type of men in our employ that will give that service, our business will show it. We are now paying the hog salesman over $9,000 a year. I think he is the cheapest man on the force, in connection with the value of his services to the patrons whose hogs he sells.

Our funds do not originate with the Federal Farm Board. I believe it is desirable in the operation of a market agency to build up some reserve against unforeseen or unpredictable losses that may be incident to the transaction of business. The larger the reserve the more apt you are to stand a lean year that you are liable to have at any time. We carry compensation and mortgage and theft insurance in the amount of $65,000. All of the employees that handle

any of the funds at all are all under bond. We carry liability and property damage for our field cars, but we don't carry any public liability with respect to yard operations. I do not believe we carry fire insurance on our furniture and fixtures. I don't think the amount of $3,086.22, set up on our books as the value of furniture and fixtures as of January 1, 1929, would be half of what it would cost new. At the close of the year the account stood at $2,411.70, the reserve for depreciation being $4,961.62. There has been a recent appraisal made, but I don't know the amount of the reproduction value of those assets.

There is competition for business between our agency and the Producers Commission Association. That would take in the Farm Bureau, the Farmers Union, the Grange, [fol. 708] the Missouri Farmers Association, the Equity Union, and various other state wide farm organizations. Members of those organizations in certain instances hold shares of capital stock in our association. A man must be a stockholder in our organization in order to receive patronage dividends. He acquires that stock by signing an application blank at the cost of $1.00 per share. It is necessary to own but one share in order to receive a patronage dividend.

In the case of our organization our reserves have been largely built up out of savings that we could make in handling the business of non members.

I have attended several meetings of the Federal Farm Board of Chicago and elsewhere. Mr. Joe S. Montgomery of St. Paul, Minn., is general manager of the Farmers Livestock Marketing Association, which is a national organization composed of the various Farmers Union houses, together with the Central Cooperative Association of South St. Paul and the Farmers Livestock Commission Co. of the National Stockyards, Ill. The Farmers Union house of St. Paul is a possible exception. We intended the Farmers Livestock Marketing Association to act in the capacity of setting up credit for loan purposes, but we were refused recognition by the Federal Farm Board. In my conferences with the Federal Farm Board it was my understanding that it was the intention of the Board in the construction [fol. 709] of the Agricultural Marketing Act to eliminate competition between different agencies in the sale of livestock. They argued that if they recognized our organiza-

tion, not coming under the National set up, it would be competitive, whereas, if we came through their national set up, it would not be competitive from a cooperative standpoint. I cannot say that they have attempted to consolidate the cooperatives on the various markets. I think possibly that is their intention but it had not gone quite that far.

In order to obtain the cheap money from any one of the cooperatives set up under the Federal Farm Board, it is necessary that livestock in that particular mortgage be marketed through a member of the national organization.

We have not received any credit or funds from the credit corporation set up by the Federal Farm Board.

There was no patronage dividend paid or stock dividend either in 1918 or 1919. In 1921 we paid a stock dividend for 1920 amounting to $1,398.34. There was no patronage or stock dividend paid on 1921 business. In 1923 for the 1922 business we paid 19% of the commissions collected, and the stock dividend amounted to $561.02. The patronage dividend amounted to $14,128.13. In 1924 we paid for 1923 business a stock dividend of $959.22, and a patronage dividend of $27,904.47. In 1925 we paid back on 1924 business 23½%. The stock dividend was $1,077.09, and the patronage dividend was $34,984.29. In 1926 we paid back for 1925 business 13%. The stock dividend was $1,206.73, [fol. 710] and the patronage dividend was $14,739.54. In 1927 we paid back for 1926 business 11%. The stock dividend was $1,263.31, and the patronage dividend was $1,734.75. In 1928 we did not pay a patronage dividend for 1927 business, but we paid a stock dividend amounting to $1,325.18. In 1929 for 1928 business we paid back 22%. The stock dividend amounted to $1,287.12, and the patronage dividend amounted to $20,815.05. In 1930 we paid back for 1929 business 25½%. The stock dividend amounted to $1,290.22, and a patronage dividend amounting to $25,421.81. The total value of livestock handled in 1930 is $8,664,142.67; in 1929 it was $11,151,279.93. In 1928 it amounted to $10,511,686.45; in 1927 it amounted to $9,246,336.11; in 1926 it amounted to $11,501,613.20; in 1925 it amounted to $11,394,114.03; I would say that possibly 66% of our livestock come from cooperative livestock shipping associations. The percentage of patronage dividends paid by this cooperative institution on this market is much smaller

than has been paid by cooperative shipping associations on other markets.

Comparing this market with some of the other markets for 1930, our savings amounted to approximately 25% of the total commission collected. At St. Joseph the percentage of saving is 37.59. At Omaha it is approximately 40%. At Sioux City it is 42.6%. St. Joe has paid back as much as 66%. The Farmers Union at St. Paul has not paid any dividend to my knowledge. The Central Cooperative Association at St. Paul pays a dividend every year of ap- [fol. 711] proximately 30%.

From the standpoint of their organization and their organization affiliations which give them business, the same conditions prevail with respect to the other agencies operating at other markets as I have described to exist at this market. The Farmers Union of Kansas is practically as successful, although not as large a membership as Nebraska or Iowa. The facilities for handling the livestock on the various markets determines the cost of handling, especially so since the drive in business has become such a factor. It is necessary at the Kansas City stockyards for us to drive our cattle approximately a mile after they are unloaded. It requires two men to do that. At St. Joseph and at St. Paul they are not driven anywhere, they are sold at the gate. The stockyards company delivers them. We have to furnish two men at the drive in gate at the cattle yards, and two men at the drive in gate at the hog yards. At most of the other markets the hogs are sold at the drive in gate. At several of the markets livestock are weighed on the ground but at this market everything is taken upstairs to be weighed. It would require at least one more yardman in the cattle yards to take care of a condition of that kind. It makes it just a little bit more expensive from almost every angle to handle livestock at this yards over most any of the other yards.

I do not know of any conditions that have come into existence since the date of the establishment of the present [fol. 712] schedule, or as present exists now, which would, in my judgment, from the standpoint of its altitude make the schedule that was reasonable in 1925 unreasonable at the present time. We have been giving our customers the very best of market service at cost by virtue of the fact that we refunded to them the amount that was not neces-

sary to run the business. Any man who is a producer of livestock is eligible to patronize our institution, but in order to participate in patronage dividends he must become a stockholder. With his permission we can deduct the $1 from the proceeds of the first consignment.

The increased activity in the last five or six years among the packers in purchasing livestock direct which does not move through the yards has tended to limit the volume of our business quite materially.

Cross-examination:

I cannot say that I have made any particular study of direct buying. We have a branch office at Wichita and I am the manager of that office. I have an assistant there. I take care of the correspondence that pertains to the general business at this office here. I work entirely under a board of directors, which meets four times a year. It takes a certain amount of my time every day to work up the details with the manager at Wichita, either by wire or telephone. I go down there pretty often. I go down six or eight times a year. Sometimes I spend a day and sometimes I might spend a week. We carry on entirely separate [fol. 713] set of books for the Wichita branch. When the Wichita house was organized, the Kansas City house furnished them the capital with which to do business. At the close of business in 1930, that capital had all been paid back to the Kansas City house. That branch was organized in 1923. My entire time is charged against the Kansas City branch. We issue the capital stock from the Kansas City house and we get a detailed report at the end of each calendar month of the amount of business handled and a detailed expense account. That is made up by the assistant manager at the Wichita branch. We keep these reports separate at the end of the year in making out our patronage dividends. Any man who is a member of the Wichita branch is eligible to patronage dividends from the Kansas City house if he has done any business here during that calendar year. He is also eligible to a dividend on the Wichita house with capital stock owned at the Kansas City house.

A great deal of our work in the country in connection with the organization of shipping associations is done at night. We leave here in the afternoon and hold a meeting

at night, and sometimes drive back the same night. It is very necessary to make trips out through the country and visit the producers themselves. They are merely a solicitious trip. I make many of those trips. I deal with the manager, almost exclusively. There are a number of our managers of shipping associations who are managers of elevators. It is almost impossible for them to come along [fol. 714] with their shipments, and consequently it is necessary every so often to make a trip to the country to visit these managers. I do that work myself. I don't go to the feed lots of fat cattle. We send our steer man, our butcher salesman.

My visiting with producers is done mostly at meetings. We have approximately 350 livestock shipping associations. They do not all ship to the Kansas City house. They ship to the Kansas City market and not to our house. There are a few of them that we have never been able to get. We don't get all the business of the shipping associations set up by the Farmers Union. The other agencies at the Kansas City market make an effort to get that business too. In my opinion, the chief factor among producers in selecting their agency at a central market is service. I mean service in selling and handling their livestock at the stockyards. I feel that if a shipping association ships to you and is pleased with your service, it tends to come back the next time.

In 1929 the administration expense was ten per cent of the expense, accounting 12.4 per cent, advertising 8.9 per cent, general expense 12.2 per cent, field expense 1.6 per cent, cattle yards 23.2 per cent, hog yards 24.6 per cent, sheep yards 3.9 per cent, and purchasing department 3.2 per cent. The salaries in the administration include my salary and the salary of one girl and half the salary of another girl and half the salary of one man. We split our overhead on the basis of an estimate of the time required [fol. 715] in each one of those departments.

I came out of school in 1915 and worked for the Burlington until I joined the Navy. I finished up with the Burlington as a telegraph operator. I have had livestock experience on the farm all my life. I came with the Farmers Union first as an account sale man. I made account sales and prorated, and did general office work until 1923 when the Wichita house was opened and they sent the office man-

ager from the Kansas City house to Wichita and I became office manager here. The job was known as cashier. We have two separate departments at the present time. I have a man in charge of the books and the cashier's department is separate from that department. I had accounting experience with the Burlington. I did general office work in a small station. In account sale work a man should have experience. However, that is not entirely essential, but he should be accurate and a good writer. I held the position of cashier until 1929. From the time I came to the Farmers Union up until I was general manager I became more efficient in the work that was assigned to me. I was given promotions in salary during that time. I use several of the boys in account sale work in the country. One of them is a stocker steer salesman and the other is advertising manager. It would be hard to tell how much time a stocker steer salesman spends in the country. He goes out in the evening to these local meetings and possibly makes a trip twice a month during the day.

[fol. 716] Our advertising manager has entire charge of the advertising in the way of getting out market letters and market reports. He edits our paper. He obtains the names of men who have cattle on feed from the men who accompany shipments to us. He writes follow up letters on cattle bought to go to the country. He answers considerable correspondence. He devotes some of his time to organization work.

The Farmers Union has an income from the dues of members throughout the State, and the various state wide organizations contribute to the state organization an amount each year. They charge dues and also initiation fee. At St. Joe the Farmers Union Livestock Commission Company pays to the State organization of Kansas the non member portion of the net profits which come in from the State organization of Kansas from their members.

"The Cooperator", which is our local paper, is gotten out by the Farmers Union Livestock Commission Co., the Farmers Union Cooperative Creamery, and the Farmers Union Jobbing Association. The cost is distributed among those three houses. One third of the actual cost is paid by each organization. My work takes me pretty largely over the State of Kansas and part of Missouri.

The "Cooperator" is not limited entirely to stockholders

of our organization. We send that paper to anyone who wants it without charge. There is no paid advertising in [fol. 717] that paper. It goes to about 6,000 people. Sometimes we run out as many as 7,000 or 7,500. In our advertising account is included anything that is given out as advertising, such as pencils and little shipper's books, tickets to the American Royal, and any form of money that is spent for advertising. It includes this paper. It does not include the salary of the advertising manager. I don't charge the advertising man's salary against the advertising account because all of his time is not devoted to advertising. He devotes about one half of his time to it.

I have given some thought to the percentage of the total commissions which would be reasonable for the firm to spend in advertising. For the year 1928 our advertising was $6,684.16; in 1929 it was $5,386.69; and in 1930 it was $4,479.21. Our particular organization being set up as it is, the advertising is not as necessary as it was some five years ago.

About the time that we were running along in nice shape here we had the misfortune to have a man in the capacity of cashier that got away with considerable money. We had to go right out in the territory with the fact that we were able to go ahead and pay them their net proceeds of what they shipped to us.

In business holding I would include service. In business getting I would include advertising and field men expenses. In the field man expense I would include any man that goes to the country to solicit business. We don't make any [fol. 718] appraisal trips. We do not have any account in our books that sets aside appraisal trips, educational trips or soliciting. We merely call it a travel expense. We have travel expense in connection with these three activities. I would regard all three of these activities as business getting activities. However, not necessarily, because during the year 1930 there was $1,095.24 spent as travel expense that was not for any of these items. It was money spent trying to work with the Federal Farm Board. I would not regard that as an annually recurring expense.

Our travel expense includes the expense in connection with working out this organization of our own. I do not know how much that costs separately. The travel expense of $1,095.24 does not include the field man's expense. The

field man's expense last year was $1,389.89 and travel expense was $449.73. That is a business getting expense. The $1,095.24 includes the expense of travel in connection with negotiations with the Farm Board. In 1928 the field man's expense was $2,576.39, in 1929 it was $1,839.62, in 1930 it was $1,811.44. The automobile expense is an expense attached to the firm's car in making trips to the country. I regard this as a business getting expense. It would be hard to determine what reasonable percentage of our commissions should be spent for business getting. That expense is growing less for our firm. Our expense- from an accounting standpoint are a little bit more than any other firm because we have these stockholder's records to keep straight. That requires the attention of one person practically [fol. 719] all the time. It is almost an endless task to do the accounting and get out these patronage dividends. Two people have been working ever since the first of the year at it. It is necessary to go through our stockholder ledger and check that against account sales on every shipment and see whether or not that man is a stockholder. We try to be as careful as we can each day going through the account sale as it is made up with the man it belongs to. We do not have any dissatisfaction with shippers on that account. We do not let them stay dissatisfied because right is right. There is a certain amount set aside each year at the close of business. We have undivided profits for 1929 of $863.54. That means that a certain amount is set aside to take care of those errors and that is the amount that remains in the undivided profits for 1929 and which will go into the surplus and undivided profits. We have a card system used in a bookkeeping machine. Each day those account sales are made up a man or a girl goes over those cards and credits every man with the amount of commission, carrying forward the amount he had on the card plus the amount for that shipment. If he is a stockholder it is stamped "stockholder" at the time the card is made or at the time he purchases stock. We have a new set of cards made on the first day of each year. It takes us about six weeks after the first of the year before we get out our patronage dividends. We frequently have customers who leave us and go to some other firm.

[fol. 720] To a certain extent volume is a factor in the efficiency with which we can handle the business. We did

not handle the largest volume of business in 1929 that we ever handled but we were able to pay a larger per cent of dividend than we had ever paid before. I decreased expenses in 1929 as much as I possibly could consistent with good business. I have not figured out what the percentage will be for 1930 business.

Our most recent employee was the fat steer salesman hired on January 1. He was formerly employed at the Kansas City Stockyards by Martin Brothers & Lee. He has been on the stockyards 30 years. He has been selling steers about 15 years. He has been selling livestock for 22 years. He came to the stockyards as a yard man and was a yard man for a few years.

Whereupon the witness Hobbs was temporarily excused.

J. C. SWIFT, a witness called by the respondents after being duly sworn, testified as follows:

I am president of the Swift & Henry Livestock Commission Company. I have been engaged in that business 32 years. Swift & Henry have been in existence now 22 years. Ten years prior to that I was manager of two other commission firms, one of which succeeded the other. Swift & Henry also have a house at St: Joseph, a separate corporation, and I exercise general supervision over that. I came to Kansas City in 1893 as a graduate of Cornell Law School and practiced law here for six or seven years. I have oc- [fol. 721] casionally sold cattle and I have occasionally bought cattle, both on the yards and more in the country, but generally speaking I exercised the general supervision and direction of the business. Swift & Henry under my management have handled approximately 350 million dollars worth of livestock. I am a member of the Kansas City Livestock Exchange, the Kansas Livestock Association and the Arizona Livestock Association. I am president of the American Royal Livestock Show. There have been two quite pronounced features of the marketing of livestock, one as to the character and volume of the supplies, and the other as to the manner in which these supplies were purchased. When I first went to the yards 30 years ago the stuff moved in pretty good sized bunches. There were no shipping associations and there was no di-

rect buying and there was no truck in business. The stuff was either shipped by the owners or a shipper who gathered up the stuff and made it into carloads. The regular shipper has almost disappeared. The shipping association came and in going in a measure because of the coming of the trucks. Where we used to have 10, 20, 30 and even 40 carload shipments at a time, it is the rarest thing now to have what we call a "string." On the other side of the market in those days, 15 or 20 years ago, there were comparatively few buyers with large orders. You could go out and sell one man two or three thousand cattle in a morning. The yards were not divided. The steer buyer roamed all over the yards for Armour and Swift, the same with the [fol. 722] cow buyer. Now the packers have divided up their buying, reduced their orders, increased the number of men, and you have an entirely new situation to meet. As the transactions get smaller in volume, from the owners' standpoint, they become smaller in volume from the purchasers' standpoint. It required more work in the yards and in the office.

I think every new mile of highway is going to bring a greater percentage of stuff in trucks and that is going to increase the labor in handling the same volume of business. For the first time last year we had months where the receipts of hogs by truck exceeded those by train. The percentage is rapidly increasing and it is increasing with cattle too. We are getting a great many fat cattle from reasonably nearby points and some stock cattle. New elements or types of competition have entered into the business with respect to both the packers and the Government, and referring to the Government I mean the so called cooperative market agencies. In a general way the special facilities and advantages offered by comp-titor, particularly by the Government, make it obviously more difficult for the man that is denied those advantages and opportunities. We find that it takes more effort to do the same volume of business and despite everything we can do, it costs us more to do it with each succeeding year. I think it would be disastrous to the market to trust the sale of all livestock to the stockyards company or to trust it to one and only one market agency. It takes competition and spur to develop the [fol. 723] best that is in us and if you give any man or group of men the feeling that they have absolutely got a

strangle hold on any proposition they cease to function to 100 per cent capacity.

The elimination of competition upon the selling side of the market would be very detrimental to the average price level because the packer buyers are checked very closely upon their buy and how cheap they can buy the stock and the percentage of kill. If they realize that all the stock is in one place and cannot get away, all they would have to do is for one man to take one day and another man another day and swing back and forth. It would be no trouble to take care of these cattle for a day or two pending their killing if they could buy them cheap enough. Now these cattle are distributed between sixty different agencies and if Swift needs a few prime cattle and Armour needs a few and Cudahy a few they are scattered around the yards and they have got to start out trying to get them, and they immediately start a competitive market.

My first duty as an executive manager is to put together the right organization. The next thing was to distribute the work so that it could be handled expeditiously, livestock being a perishable product. The next thing was to furnish capital and to obtain credit enough to take care of the customers. One of the other things is to keep the selling agency on their toes, keep them supplied with all pos- [fol. 724] sible information and keep the men who own the livestock posted as to conditions and demands. My function as I conceive it, is to get the high dollar for my customers out of their livestock. I keep in constant touch with what I consider the key men of other markets. I try to have a little daily visit with the head buyers of the packers. I check up on all the Government reports that I get time to read as to the probable supply. I study the receipts, where they are coming from, and try to get an idea of when the runs from certain sections will be exhausted. I study the general business conditions and try to figure out the probable outlet for the product. I try to reduce this information to some sort of an intelligent expression and convey it to our friends from time to time. There is not a day that I do not have a group of them in to consult me as to whether or not to take on cattle, what kind of feed, what kind of market to get ready for, and how and where to finance them. I feel that my relationship is that of a partner of all of the customers. I use this information in counseling with my

salesmen and buyers. I suppose I average at least ten telephone calls every morning to my different salesmen. I usually go out the first thing in the morning and look the cattle over so I will know the kind, or what we have, and what we have to meet.

There is hardly an afternoon but what I have a little meeting with some of my men and give them the benefit of what I have learned and the experience I have had. In the [fol. 725] course of a year I have a great many contacts. There are three outstanding factors that we always have to keep before us—grass, grain and water. They are the keynotes of the livestock situation and we are constantly on the alert to see what the conditions are with respect to these matters. I often make trips into the country to view with my own eyes and observe these conditions. I often leave here on a Thursday afternoon in my car and drive pretty hard until Saturday night or Sunday night, covering six hundred to a thousand miles, going particularly to centers where we are interested in cattle that are in pastures or maybe larger bunches that are on feed. If they are non resident owners, like Texas men pasturing in Kansas, they frequently request us to make the trip with them. They accompany us and often they go home and leave the matter entirely to us. We market their cattle at our discretion but according to our judgment. I think the judgment of an experienced man who is familiar with the grass and water of a country and knows its record for production or its record for failure is very valuable. I think in many cases it has saved owners thousands of dollars.

When I entered the livestock commission business the spread in price between the lowest grades of livestock on the market and the better grades was not nearly as wide as it is at present. The first day I was down there top cattle brought 5.55 and the cheapest thing on the market was selling around 3¢. Now we have the 3¢ animal and as I left the yards the boys were trying to get 12½ for little Nebraska cattle. We have not only got wide spreads but wide [fol. 726] fluctuations. That has increased our difficulty and I think you can say it has increased our responsibility because we have got to know now what there is a difference in the price of an 800 pound yearling and a 650 pound yearling heifer. Years ago there was not any difference. That situation has no effect upon the necessity for and the

value of this country work or appraisal work which takes place before the livestock is marketed. It has forced us into a lot of labor and expense that we did not experience before.

I devote all my waking hours to Swift & Henry. I have no vacation and no recreation. I find myself down there more and more at night and late on Saturday afternoons. In fact, handling a less volume of business than we used to handle I find myself wrking at least a third more hours. There is hardly a Sunday in the last few years, if I am in town, that I did not feel obliged to go to the office sometime during the day, and very frequently I find myself so crowded that I have to work in the country on Sunday. I was an ardent golfer up to five years ago but have not been able to play since. I gave up my membership in the country club and am concentrating on Swift & Henry. I average three telephone calls each evening when I am at dinner. Frequently I am called in the night on business deals. I have assisted my patrons in obtaining credit and then passed it on to them to the extent of many millions of dol- [fol. 727] lars. Swift & Henry have endorsed the paper and in some instances I have endorsed it personally. We never seek any loans but when we make a loan we figure it is going to be helpful first to the customer and secondly to us. We do not make one third of the loans that we are offered. We even discourage the customer and tell him that we do not think it will make any money, that it is not a good investment for him and we would not care to endorse the paper. Most of our loans come from small centers where there are limited banking accommodations. We have very few range loans either in cattle or sheep and we make no hog loans at all. We never require the buyer to agree to sell livestock when ready for market through our agency. We tell the buyer that if he can sell his stuff at any time at home for more than he thinks it would bring on the market to do it and we do not charge any commission for that. We want our customers to prosper and if they are prosperous they will stay in business and whatever is for their interest in the long run is for our best interest. I have always felt that whenever you forced a customer to do something that he felt was unfair, that ultimately it rebounded adversely to all concerned. I believe if a service is rendered, if we

sell livestock on the market, that we should be paid for it but I do not believe in using a form of duress when a man is making an application for a loan and will agree sometimes to most anything. I notice in the application form used by the Producers Commission Association that the [fol. 728] buyer agrees to sell the cattle when they are ready for market through an agency affiliated with the National Livestock Marketing Association. That is part of the exhibit referred to as No. 12 which I understand came in conjunction with Mr. Angle's testimony.

I have talked to the representatives of the various branches of the Government agency. The representatives of the Denver Agency told me that it is distinctly understood that in addition to that agreement it provides that the livestock must be sold at the market, but it has evidently been waived to the extent that if a man does sell in the country he remits the proceeds and they credit him on his obligation with what the stock brought less a commission. We had one customer that has had that experience who did not realize that he would pay a commission if he sold at home. The National Livestock Marketing Association has set up an agency at Fort Worth and engaged my good friend John Burns to run it and they are making a good many loans. They purchased a market agency at St. Joseph and are offering friends of mine money for less than I can borrow it. All through the territory you find this activity very vigorous and aggressive at rates that no old line company can compete with. It has two effects: it makes every farmer or feeder that hears about the Government loaning some man money at 6% feel that his banker who is charging him 8 and have difficulty in keeping the bank open at that, and that his [fol. 729] commission man who is charging him 7 on his feed lot loans and 8 on his stock cattle loans are robbing him and they don't realize that the Government is taking the taxpayer's money as a whole and shoving it to a limited class, provided they will do business through a certain group. He does not analyze the situation but he just looks on the face of it and says "I am being discriminated against; I am being treated unfairly." This is the hardest competition to meet because it is absolutely unfair. If the Government would carry out the provisions of the Farm Board Act with reference to constructive work, ed-

ucation, and things of that kind, there would be no criticism but when they get into the loaning of my money to my competitor at preferential rates to tear down my business, I think that is absolutely wrong. I am inclined to think that it will continue for some time until experience demonstrates the absolute futility of the experiment. I expect to be exposed to the higher unit costs of operation in my business as the result thereof. As competition becomes keener, the operation costs go up.

I have heard of the Inter-Mountain Livestock Marketing Association. It has headquarters at Denver and operates primarily in the Denver territory. Receipts of livestock from that territory come to this market, at Kansas City. Respondent's Exhibit No. 21, which is the marketing agreement used by the Inter-Mountain Livestock Marketing Association, is a contract which states that the man that borrows the money appoints the association or its delegated agents, his exclusive agent, giving exclu- [fol. 730] sive right to sell, market and dispose of all his livestock. If all the producers of livestock in the Inter-Mountain territory signed up that contract and lived up to it there would not be any business for Swift & Henry or anybody else in that territory. There is a similar provision in the articles of incorporation and by laws of the Texas Livestock Marketing Association which is Respondent's Exhibit No. 22. It is in a little different language. It provides that all livestock marketed by the association shall go through a cooperative association.

I had a very interesting and illuminating meeting with Mr. Legge in Washington. He told me that he was looking at the picture in a big way and that he did not expect to reduce marketing costs. He said "What we hope to do is to control the supply, control the flow to market, and control the price when it gets there." He said that the only way they could hope to do this was to enlist the major portion of the producers in some strong organization or organization which they could control. He told me that under the law there was no hope of my organization or any other organization except strictly cooperative, participating in any of *of* the activities of the Board. I think there was some reference made to the Capper Volstead Law in talking to Mr. Legge. We did not go into the detail of the set up of the cooperatives in the sense of the

law. I feel that I am a cooperative though in the spirit of my activities. (Respondent's Counsel reads Respon- [fol. 731] dent's Exhibit No. 23 which is a release of the Federal Farm Board containing extracts from a speech delivered by Mr. C. B. Denman, a member of the Federal Farm Board, in an address before the Missouri Farmers Union at Grant City, Mo., on October 15, 1930.)

Just in proportion as the ambitious program outlined by Mr. Denman succeeds, just in the same proportion will the injury be to our business and all old line companies' increase. (Whereupon Respondent's Exhibits 21 and 22 were received in evidence, it being understood that they were not offered as proof of what the Inter-Mountain Livestock Marketing Association and the Texas Marketing Livestock Association are actually doing but for the purpose of giving the witnesses information as to what would happen if the programs therein outlined or the contracts therein shown are actually put into practice.)

(Whereupon Respondent's Exhibit No. 23, the same being the release of the Federal Farm Board, excerpts from which Respondent's counsel read into the record, was received in evidence.)

There has been a lessened percentage of stocker and feeder livestock coming to market and naturally a greater percentage going from the range to the feed lots direct. There has grown up quite a large number of country operators, that go down into Texas or New Mexico or the west generally and buy these cattle and take them home and sell them. We have had customers that more and more have sold their cattle at home to traders of this kind. [fol. 732] This is reflected in the constantly decreasing receipts of cattle at Kansas City. We do not get as many cattle as we used to here. Each year shows less, even when the total supply in the territory is generous. I do not know as I have a well founded opinion as to the causes. In one group of people they organize an association and put on a big advertising program and did get behind their membership to sort and shape their cattle and developed a superior quality of cattle which they advertised through the corn belt, and put them up and sold them at public auction. In other cases I think there has been little groups organized that not only buy the cattle but finance

them and distribute them around in small lots. There is a group at Des Moines called the Des Moines Livestock Association.

I think the packers pointed the way with their direct buying of hogs in the country and their organization of concentration points. These movements around the market are competitive with the market. I have had some opportunities to check up the relative expense of handling livestock by direct marketing as compared to that on the market. These cattle are frequently purchased by these so called country traders by the head and sold by the head. When they are weighed up they frequently are shown to be costing considerably more than they would have cost bought by the pound, the only way we trade on the market. That movement reached its peak two or three [fol. 733] years ago and has been declining since because the experiences in the country were disastrous to the purchaser as compared to his neighbor who bought on the market. The packers, in their direct purchases of hogs at Kansas City use the open market as the price but they had the benefit of the lessened competition and the lowered price because they had a generous supply at their own plant.

The printed statement in Respondent's Exhibit No. 2 is a very accurate statement of the methods and results of the packers' country operations, and is the method that they pursue now wherever they are operating. They change their territories occasionally. From a competitive standpoint this is difficult competition to meet. The packers put their men in a position where the independent operator cannot compete with him, and when they have killed him, they recoup the losses that they temporarily took in the operation of forcing him out of business. Referring to Schedule No. 2 of Government Exhibit No. 14-59, which is the audit of our firm, I don't think there is a man on that list at that price but what could secure the same or greater salary from some competitor. By those four men that are represented, I simply figure that that was a fair salary or drawing account to put them down at, and their additional compensation which I feel that they could earn should come out of any profits the business might show, but I didn't want to make a set up of their value and upset all the rest of my [fol. 734] organization. I don't think that $7,300 is an ex-

pression of my value to the business of approximately $20,000,000 a year, involving all that I am trying to do. I have received offers of amounts far in excess of that amount in the way of a salary from other businesses.

We don't know when we start the first of the year whether we are going to have a drought or a flood and these amounts are all that I feel safe in holding out to these people. As far as Mr. Henry and myeslf are concerned I even go a little further. We only actually draw $400 a month, with the understanding that if the earnings justify we will draw the rest of the $7,300 at the end of the year, before we figure on any earnings on the stock. Mr. Henry has been at the yards practically 40 years and has been selling cattle over 30 years. His ability as a salesman is best evidenced by the fact that he probably handles twice as many fat cattle as anybody on the market. His services attract a large volume of business because of their value.

The other cattle salesman listed here should be William Byers. Bill has been there about the same length of time. They divide the steer cattle. Mr. Henry sells the corn fed cattle and Mr. Byers sells all the grass fat cattle and some of the corn fed cattle belonging to friends of his. Mr. Frank Byers is the hog salesman. He has been on the market 30 years or more and is very competent. The first employee's salary of $10,546.95 is that of a young man [fol. 735] who has charge of our butcher department. In addition he has a personal acquaintance and his salary is based not only on his worth as a salesman and the work he does but also on the large flow of steer business that comes to us because he is with us. I think he is the most competent butcher salesman in the yards. I think he is more of a general, can handle a bigger volume and get it done right. Taking into consideration the existing amounts that we pay the employee members of our firm, the personnel organization of employees, has now and did have as of the first of the year 1929 an established value to our organization. If by some calamity or some occurrence this entire organization of employees were disbanded and I could not again procure their services as of the first of the year 1929, I know that my business could not have been as satisfactorily and efficiently conducted. I know further that it would show a big shrinkage. It is just like a machine that has been put together and functions properly by adjust-

ment, and one man may be a good man in one organization but not fit in with the other. I think I have got a highly functioning, smooth running organization. I pay my men well and work them hard, and try to work a little harder myself, and in my judgment my business has a going value. If I was to be injured and not be there for six months, this organization, the way I put it together and the way they feel about it, the pride they take in their business, the way they have been treated, their acquaintance with customers, would [fol. 736] carry on. They could not do it indefinitely. We have one man who appeals to one group and another to another, and collectively they appeal. That appeal arises out of the efficiency of the service which they have rendered in the past.

With reference to the working capital set up on pages 109 and 110 in Government Exhibit No. 15, the amount being $16,000, I don't think we could start to operate on that and do our present business. We employ capital in every activity. We have a man down here today who was here yesterday. He started to buy 8 or 10 loads of cattle, get them together, and ship them out at the end of the week. He doesn't know what he owes us till we get through buying. I will often have over $16,000 worth of cattle bought that we have paid for and we have not got a cent. There are times when we are using $200,000 to clear our business. Then at the end of the week we can clear up and get back into the bank. Very often we make remittance of proceeds in the ordinary manner before we are able to collect from the purchaser of the livestock. I don't suppose there is a day in the week that we have sales collected, unless it is possibly Friday and Saturday, but whenever we get our tickets in, regardless of whether we have collected, if we can get the account sales made up before 4 o'clock, we shoot the money out to the country, and in order to do that we have the bank at the yards stay open an hour later than the banks do up town.

[fol. 737] I know the customers appreciate and desire prompt remittance of proceeds. I know the country banker is behind them to prod them all the time. Most all of these cattle are mortgaged.

We have eight Exchange memberships that we either own, the firm owns, or the firm owns and loans to its men. On Exhibit B of the Blue Audits for our firm, the member-

ships were set up at *$4,3000*, and that is not intended to be representative of the present replacement value of those memberships. We have picked them up at times in the past when somebody would get in a pinch and want some money. I think that is what they actually cost us and not what they are worth at the present time. The four memberships belonging to Mr. Henry and myself and the two Mr. Byers belong to us individually. Those other memberships have been carried for a long time. Each is in active use. You could not handle a million or two million dollars worth of property in a forenoon, on the basis where there is not a single transaction that is binding in court unless we had an organization. You would have a "shot gun" market. You could not get justice from the packers. You would be at a disadvantage dealing with the railroads. The man that owns the property is not here and these people that are representing him have got to be in a position to command respect. I was president of the Exchange for several years and I was president of the National Exchange. I had a most interesting six weeks war with the packers at [fol. 738] the time that they attempted to take the stock over to a packing house and have it killed and make us a report on it. The big packers notified us that after a certain date instead of paying for the cattle on the basis of change of ownership at the scales, all female cattle would be weighed to them, driven to the packing house, killed, and they would subsequently report to us the results and pay us on the basis of that report. We took the position that as agents we were not authorized to surrender possession of the property and have its identity destroyed without being paid. There was nearly six weeks that we did not sell them any female cattle. Finally I went to Chicago and met them and we agreed to kill it off and resume business on the old basis. I think you can demonstrate at every market in the country that the Exchange has been advantageous to the producers of livestock in connection with transportation costs. It has helped order buyers and small packers located away from these markets to secure fair transportation rates and services.

Whereupon Respondents Exhibit No. 24, the same being a copy of the arbitrators' award in Dockets Nos. 11, 12, 13, and 14, was received in evidence.

I don't know of any changes in the conduct of our business as a market agency at Kansas City occurring since July 31, 1923, which would tend to cause rates and charges reasonable than to become or be unreasonably high either [fol. 739] in the year 1929 or at the present time. On the contrary, with lessened volume and smaller units and increased detail, the rates that were provided for in 1923 would hardly seem adequate to cover the increased expense of doing business now. I feel that present conditions and tendencies almost preclude in listing young men of integrity and ambition in the business. When we show them the gross revenue less than 1 per cent for handling a perishable produce, subje-t to Governmental regulation and competition, no sane young men would embark in the live-stock commission business today. The whole proposition of Government interference in private business I think is diametrically opposed to the genius of our institutions.

Cross-examination:

I would say in the course of a year I travel 15,000 miles. I make shorter trips by automobile. The trips outside of Kansas and Missouri I make largely by train, and I radiate by automobile from some central point. I have two purposes; one is to get some business that I don't have and the other is to look after some business that I am already carrying, the character of that latter class of business is loans. I meet the man, try to see the security, and look over the physical aspects of his outfit. If it is a feed lot, I look at the supply of feed, and if it is a grass proposition, I look at the grass and water. I never go in a country where I have any loans, if I have possible time, that I don't look it over, although the loan is already on the books. [fol. 740] Generally speaking, our loans are on feed lot cattle or cattle in nearby pastures that are coming to market that have been moved from the range home to the Kansas grass *of* Oklahoma grass on their way to market.

We make no loans for more than six months because the paper isn't eligible for rediscount over six months, but we frequently renew that. Our loans run from 30 day to six months. We charge according to what it is costing us. Our rates now are 7 and 8. We are paying 6% discount for the money. We are endorsing paper so we don't feel that we

can possibly loan it for 6%. We feel that we should have a two point margin to justify the endorsement of paper. The risk primarily determines whether we will charge 7 or 8%. Most of the banks in this eastern territory charge their good customers 6 or 7%. Practically all of the banks west of us charge their customers 7 and 8%.

I would say that 40 days in a year is a pretty close estimate of what I spend in the field. I include in that the time of attending conventions. I go to three or four and sometimes five conventions in a year because I can see in a few days a group of people that would take a lot of traveling and expense to meet.

Not a great deal of time is required in connection with office work on these loans. I know these customers pretty well and I have a young lady secretary that has been with [fol. 741] me 12 or 14 years, and a cashier that has been with me 21 years, and I handle it pretty rapidly. If we are making a loan on cattle bought on the yards, we have the actual figures before us. If the loan is on cattle in the country and for a customer whose cattle we are familiar with, we don't make another inspection. A certain amount of work is necessary to keep track of the loans. In the first place there is work in drawing up the papers, and then we have to keep a file and a record. I have rather an extensive acquaintance with bankers and our paper enjoys a rather good reputation and most of the bankers have an understanding with me that I can use them to a certain extent. I never have loaned to our credit limit. There is not any written rule or regulation or law but it is generally accepted that ten to one endorsement is about the line of safe business practice. I run over and then many times I run clear under.

The loan business varies with the seasons and with conditions. The first item on the balance sheet in Government Exhibit 14-59, which is cash on hand and in bank amounting to $42,397.87, is used both in the loan and in the commission business. I don't think I could determine how much of it is used in each branch of the business. I think it would fluctuate from day to day. There is an item of investments in farms amounting to $52,368.36. They all reflect loans that failed to pay out, and we took the farms to recoup ourselves and in most cases we still have them. We have three farms and one ranch. About the only farm we exercise

[fol. 742] supervision over is the Kansas farm of 800 acres.

On Exhibit C of the profit and loss statement there is an item of country commissions. There is not anyone that handles the country business exclusively. Most anybody in our selling department is liable to come in contact with an opportunity to sell some cattle in the country, and if the trade is consummated we usually get 50 cents a head. In about half of those cases a trip to the country is required. We usually send a man down that is a prospective buyer and he buys them and the owner remits us 50 cents, a head commission. Other times we will organize a little group and take them into a neighborhood that has got a lot of cattle and maybe they will buy them. Somebody in the cattle department usually arranges to go at the end of the week. Occasionally I take charge, personally of these transactions. I make some appraisal trips myself. I appraise the cattle from my idea of value. Sometimes the appraisal is for the purpose of making a loan and sometimes it is with the view of telling the man what his stuff will realize. We handle approximately 5,000 cars of cattle in a year, and there would not be a thousand of these cars of cattle and that we are interested in financially, and in the smaller units we would not see them, but I haven't any figures as to the percentage which we appraise. We appraise a great many cattle and counsel with a great many owners where we have no financial interest in the cattle except to be of [fol. 743] service to the customer and get a sale of the property.

We do not get around to all the customers. We rarely make a trip except upon request and I don't make a third of the trips that I am requested to make. There are a good many factors entering into it. Some men are notorious for trying to use you and then not remember you with any business. I go where I think I will do the most good both for the customer and for Swift and Henry. The customer regards that of value to him and they often times offer to pay you, but we never accept it. Eight or nine of the members of our firm are members of the Exchange, and are all qualified to solicit. Under the rules of the Exchange we can only have 30 days solicitation for any one firm. It becomes a question of distributing the time.

We do not have any budget in connection with our advertising expense. We have adopted some general policies.

We cut out resorting to country newspapers. We practically cut out street cars and telephone directories and all things of that kind. We advertise in the official livestock paper of the Kansas Livestock Association, and some in the Drovers Telegram. We depend a good deal on personal correspondence and personal contact. The object of advertising is to keep ourselves before possible clientage in a favorable way. We do not advertise extensively in the Kansas City papers.

On Exhibit C of our audit there is under the heading of "Deductions from Income," an item for bad debts amount-
[fol. 744] ing to $3,198.50. That is not one item, that is the accumulation during the year. Sometimes there are shortages in loans, or sometimes they are petty counter checks that we cash. Sometimes we have shipped some cattle and they have been refused or there has been a mix, and we have had to resell the cattle. In a broad sense we have most of our bad debts in connection with the loan business. The house at St. Joseph has been in business as a separate corporation at least ten years. I go up there maybe twice a year. They don't make a great many loans. My firm and I, personally, stand behind their paper. We never charge that house with any expense because they frequently forward us business from up there.

I have given considerable thought to the question as to the amount that the firm can reasonably expend for business getting purposes. I think it varies. We are not only competing among ourselves, possibly sixty outfits down here, but we are competing strenuously with at least five markets, possibly six. At times we will have a shortage of a certain class of cattle in our territory and other markets will have a surplus that will justify us in making an extra effort in their territory. When on the other hand, supplies are normal, we would not be justified in going into that territory at all. The additional business should more than pay for the cost of advertising, if it is good business, particularly if you are going into a territory that is normally yours. You must make that particular venture pay
[fol. 745] because you cannot hope to have a continuing flow of business from that kind of a situation. At the present time it would be futile for us to spend any money trying to get stock cattle out of Omaha's territory because Omaha is down here buying stock cattle on the Kansas City mar-

ket, but Omaha has got more fat cattle in her territory now than we have, and we will be justified in working Omaha's territory vigorously for fat cattle.

If a man would bring twice what his salary and traveling expenses were, I would be satisfied, in that kind of a territory. I would be willing to send my man out any time that somebody would guarantee me two for one on his trip. I don't think we lay out anything like that for business getting. I think our traveling expenses for last year, if I remember correctly, were about $8,000. I haven't found that it pays to put a traveling man on the road for the commission business like it does for the mercantile business. The experience of my firm is that the relative figures show that we used to buy less papers, do less traveling, send out less mail matter, and employ less stenographers, but we managed to maintain our volume of business. We did try to make the service bring back not only the customer but bring some of the neighbors, and we try hard for the personal contact. I make it a point to try and shake hands with every customer every day; go out in the yard and look over his cattle; work with him and advise him. The personnel of our firm is a much greater drawing card, and I think [fol. 746] I put a lot more into the business than the majority of my competitors. Mr. Henry has a very strong personality, and the young man at the head of the butcher department has a wonderful personality. The strongest factor in getting business is integrity and confidence of the people in us. If you don't make sales, you would not hold the business very long. I would consider confidence the strongest business getting factor and service the strongest business holding factor. That is what each member of our firm attempts to do.

I have charge of the employment of all the help. Our men average to be longer with us than any outfit in the yards. In filling a position I want a man to be absolutely honest. I want him to be able to stand up under pressure and not to be grouchy. I want him to be a good judge of livestock, have ability and judgment, a good trader and worker. In that answer I have special reference to salesmen and buyers. In a yardman I want a man to be there at 6 o'clock in the morning and stay with a smile until the work is finished. I want a man who is a good mixer, to meet the customers, who knows them when they come in the alley and that feels that he is a partner in the firm. I

call my employees "associates." They have to have experience and if they don't have it they are liable to cause losses for the customer and for the firm. In the office help I want integrity, loyalty, industry and interest in the business. Our cashier has been with us since the day we opened. [fol. 747] Our other bookkeeper has been with us 17 years and the next one 11, and the stenographer 14 years. I reward them according to their ability. I find that the other firms at the market are seeking people of the same caliber because they are frequently offering my men inducements to go with them. That sort of ability is in demand. It is generally accepted that anybody that is working for Swift & Henry can get a job with most anybody.

I had quite a substantial following in the country when I formed this firm. Mr. Henry had been a leading fat cattle salesman for many years and I had been manager of a good sized business and make a good many contacts. We started right off to do a little business. I attribute that to the confidence in our service and the fact that we enjoyed some credit. We extended some financial credit right from the start. We have some very good banking friends. We have been in the loan business ever since we started this firm.

I think that as long as livestock comes under present conditions and is subject to the caprice of the weather and other things and is of a perishable nature you have got to have enough selling agencies to handle the maximum offerings, and that at many times results in a lot of idle ability and power when the minimum runs are coming. I think there can be too many agencies on a market. I think there can be too many of anything. It seems to me that the [fol. 748] greater spread between the top price and the low price of cattle has become more acute with us each year. Today we got a break of 50 to 75 cents a hundred on heavy fat cattle. When I first went into business such a thing as that was never heard of. We got a break of 40 cents on lambs on some kinds here today. They went up 50 cents yesterday and down 40 cents. All these changes have been more or less gradual and until you stop and check up sometimes you do not notice them but they have been more manifest in the last four or five years.

I do not have personal business of any considerable scope outside of the firm business. They have been largely

absorbed in the last two or three years in making the cattle business stand up, I did have at one time. I received a letter from a former customer of ours saying that he was tied up with the Producers Commission Company with a loan with them and that he had to ship to them. It is my impression that the shippers are not particularly pleased with that sort of an arrangement. I think they feel that the 6 per cent rate had quite a few pull backs on it because they were not told about it.

I referred to a salesman in our butcher alleys who has a following and I would say that that young man controls, $20,000 worth of commissions a year. He is game enough to offer to work for me on a percentage basis but under the rules of the Exchange I cannot hire him that way. There might be two or three other men on the Kansas City stock-[fol. 749] yards that can control that much business. He is our head butcher salesman and he sells more butcher stuff than anybody in the yard. He sells a better class of butcher stuff and then we have a man that sells the calves. We have a man that sells the bulls and the cripples and some of the odd cattle. This butcher salesman makes trips to the country to visit his friends. I don't suppose he makes over six or eight trips a year. We had a man in the yard yesterday with five loads of cattle; that is the first of a thousand fat cattle. That is his customer and he went down to see him and go over those cattle a few days ago, down in Oklahoma. He has been with us about 10 years and he has increased his clientele very materially.

We have days that we have as many as 300 distinct sales in the butcher alley and most of this stuff has got to be sold from 9 o'clock to 12. The packer buyers don't do much after 12 o'clock. We have days that we have 200 head of truck in cattle and have come in very small units. We have three men selling cattle in the butcher alley and they sort this cattle up and shape them and decide what they will do with them each morning.

Redirect examination:

We have some losses in connection with the operation of the cattle loan business every year. I don't think there is any question about it, that a larger proportion of our gross revenue had to be devoted to business getting and main-

[fol. 750] taining when the business was being opened up than was subsequently the case after the business was developed. I have always said that we were not justified in going after business and getting it the first time unless we were prepared to give the service that would give us a chance to hold it. It was reflected in our first six months of activity. We spent money on the theory that we were going to get the business and we went in the red and that was all right. In referring to the solicitation of business in the territory that was normally tributary to another market and in saying if the cost of procuring the business was not in excess of 50 per cent of the gross revenue, I consider it reasonable. I had in mind that if we did not obtain that extra volume of business the overhead expense of our organization would run on just the same. Our country commissions are what we call a pick up. We do not count on it in planning our business. I don't think we ever go out to make a trip to look at a load of cattle. Sometimes if we are in a territory and passing by where there is a load and a man wants us to stop and look at it we will do it. We have to have a more substantial volume in sight to justify the time and expense and men with single loads or less do not ask us to come and look at their business. When that business reaches the market it would average considerably more than a carload at a time. It would be less expensive to handle in the yard but somewhat more expensive to handle off the market in view of the appraisal [fol. 750½] work that is done. You can handle a carload of straight uniform cattle or five carloads relatively much cheaper than you can handle one carload of different kinds.

I have always tried to pay my men all the business would afford and then try to secure from them all the possible service that they can render. We have had a good many instances where other firms have offered more money to our employees and they have offered to stay with us. Our payroll for services rendered compares very favorably from the employee's standpoint with any of them here. The history of the organization of the first Exchange was that the practice of docking hogs became so outrageously unfair that the members of the Chicago fraternity went together in a voluntary association. It wasn't anything out of their pockets, but it was a whole lot out of their customers' pockets. There are days when the present agencies

at the Kansas City market are taxed to their capacity and there are many days when they are not nearly utilizing all of their capacity but we have nothing to say as to what agencies shall come on the market at the present time. We do have something to say as to who will come into the livestock exchange. The effect on our market operations with the establishment of these feed lots has been a material increase in our expenses. I think they have substantially increased the returns to our customers. We do not get one penny of revenue from the additional activity that has resulted from the development of these feed yards. I run my expense account in detail in my ledger and I check it [fol. 751] carefully each month. If we find any item is creeping up I commence to dig in and get the details of that. Our market agency has not in the conduct of its private business furnished transportation and legal services to stock men. No overhead organization in connection with our agency furnishes our patrons with such service. I would hate to think of delegating to any agency the control of an industry whose successful operation is necessary to the prosperity of the country when there are no two states and hardly any two counties where the conditions are identical, where the product is perishable, where it is subject to uncertainties and fluctuations of nature and where its control would have to be centered in some one point. It just sounds to me like a wild dream that would result in financial chaos to livestock and agriculture. I think the fundamental oversight in all these considerations is to try to figure those who are engaged in the business and render a personal service as of an average capacity or ability and not recognize that we are in the same position as the doctor in the practice of his profession. Our business comes to us primarily because people have confidence in our ability. We are more like a banker. I receive deposits of 20 million dollars a year in the shape of property which people ask me to sell. I don't think that a man who is entrusted with that kind of a trust and that magnitude of operation should be considered any different than you would consider the highest type of professional man. If [fol. 752] he has to work for compensation with others with no hope of protecting himself in his old age does not

accord with the idea of Government opportunity and justice and fairness.

Recross-examination:

The runs are not as heavy for a short period in the fall now as they were when I started in business. They are distributed since the advent of the cotton seed. We kept a man in our service for three or four years who was ill, who had been faithful, and we paid his salary without a murmur. We have held men who for the time being were not good producers to develop them into producers. Rates and volume of business both enter into what we can pay our employees. If we do no business we would have no revenue. If we had one third more business we would not have one third more expense. In the case of truck in business we have to make an acount sale, a check, and write letters even if there is only one head. We have to write a letter and a check to the dray man. The truck in business has already doubled our office operation. I would not say that it has doubled our expenses. Every check that we write costs one half cent each; every letter we write costs 5 cents.

Our business runs more uniform than any firm on the market and always has. We never let down and we never concentrate on one section. We have tried to fortify ourselves by having business coming from all sections of the [fol. 753] country. The Kansas City stockyards is, in my judgment, the most expensive place in the country in which to carry on a business. We are on the border line between the grass and the grain. The geographical lay of our yards is a mile and a half long and it is narrow. Then there is a great diversity of offerings. We are what you might call an intermediate market. We work on a world of business and when it gets ready to move it goes to Chicago. I think we reach out further for our business. I am quite familiar with the ad which appeared in the Kansas City Star under date of Sunday, December 28, 1930, entitled "Growing Yearly in Importance, Kansas City Livestock Market." I didn't write this copy, I saw that heading which said "Growing Yearly in Volume." As far as the physical construction of the yards it is exceptionally good. They have fine facilities for taking care of cattle, hogs and sheep and good facilities for weighing them. The yards are infinitely better than they were ten years ago because they have cut out the

pockets and made straight lanes and double alleys. In this ad it says that the Kansas City stockyards is conceded to be the most modern, best equipped, and most systematically arranged of any stockyards in the world. Whereupon a copy of this ad, the same being marked Government Exhibit No. 29, was received in evidence.

Redirect examination:

This ad introduced in evidence as Government Exhibit No. 29 was submitted to me by a young man from the Star. Ad writers ordinarily desire to boost the product or the institution or the commodity advertised and they want to get the order for that two thirds page ad. Every bit of additional service means additional expense. It does not necessarily follow that because of these yards and the facilities might be beneficial to the owner of the livestock which patronizes them that they would therefore be less extensive from the standpoint of the operation of the market agency that sells the livestock.

Recross-examination:

The ad shown in Government Exhibit No. 29 is under- [fol. 754] written both by the Kansas City Stockyards Company and the Kansas City Livestock Exchange.

Whereupon the witness was excused.

Mr. James B. Wallace, a witness called by the Respondents, after being duly sworn testified as follows:

I am engaged in the general insurance business, except life insurance. I have been engaged in the business since 1901 and have conducted my own agency since 1906. I have always been deeply interested in our insurance organization and after going through various positions was finally president of our local agents' organization. I have represented our local organization in its contact with the National organization of insurance agents. Our compensation is based on a percentage of our premiums which we handle in our office. The percentage ranges from 10% to the maximum of 25%. That is the gross commission out of which we pay our expenses and conduct our offices and clerical

help. We have had contact with the market agencies at the Kansas City stockyards from an underwriting standpoint. Since 1902 I have handle- a great deal of insurance business for livestock men at Kansas City, especially pertaining to bonds and liability insurance. When I first came in contact with them they were signing each others bonds that required at that time guaranteeing the payment of feed and freight and guaranteeing the delivery of cattle until they had been [fol. 755] paid for in the daily transactions down there. That was what is termed personal surety and in order to relieve each other from that responsibilty they decided to buy corporate surety. I procured some of that business. Bonds were given to the Kansas City Stockyards Company on account of feed and freight and on account of the stockyards company being custodians of the livestock at various times while stock was in the yard. I am still handling bonds of that character.

The rates submitted at that time varied from $2 a thousand to $4 a thousand. A rate was written at $2 a thousand finally and has been in effect since 1902. The rates are higher at other markets. I confined my bid practically to the condition that all agencies place the business through my agency. In fact I did not submit my bid until that was understood. The existence and maintenance of the Exchange organization was the main consideration by my company in taking the rate of premium on these bonds. The livestock Exchange had impressed us very favorably as to their source of control over their members and we felt that if we would confine our writings mostly to the members of that organization a great many of the ordinary hazards would be eliminated. We felt that it would not be necessary to scrutinize the applicant and incur the expense of investigation that is ordinarily pursued in the ordinary transaction of the bond business, and felt that we could have that reflect in the rate. As I remember in 1919 or a year or two [fol. 756] prior to then, there had been a failure to pay for proceeds of the livestock, or failure of livestock commission men at this and other markets, and then the idea originated among some individual firms to add on their letterhead that they were bonded "to whom it may concern." The proposition was put up to us, guaranteeing that members of the Exchange would pay the proceeds of shipments of livestock to the shipper. The bond form finally developed was way

beyond any fidelity or guaranteeing of honesty. It was actually a financial guaranty. I am using that "financial guaranty" as known among bondmen or surety men and surety companies, as a very hazardous undertaking. I represent the New Amsterdam Casualty Company and the Metropolitan Casualty Company. I had great difficulty in getting my companies to entertain the proposition because they looked upon it as a very dangerous proposition. My experience in underwriting the bonds to the stockyards company was an advantage in securing the consent of the company to the execution of this new form of bond. I called their attention to the fact that we had 15 or 20 years' contact with these people and our intimate acquaintance with our applicants.

The existence of the Exchange organization was my main consideration and I discussed that matter quite extensively with the surety companies. We felt that the rules of the Exchange, if their control of the members' conduct was effective, would cut down the risk. One of the considera- [fol. 757] tions that was embodied in entertaining proposal was that we felt that we would be entitled to a man's indemnity of anything he owned or possessed in the way of money or other things, and we felt at that time, with the Exchange memberships being considered worth at least from $3,000 to $3,500 we would cut down any final loss that we might incur, and as it turned out in two or three cases it worked out. We are indemnified by an application that is signed by our principal or applicant to the fullest extent of anything possessed by the applicant and in any payment that we made the company would be subrogated. In one instance we realized $2500 on a membership in connection with a claim. That was sometime with- the last three or four years.

In writing automobile collision insurance there is quite a material difference in the rates as applied to policies that contain what is called a deductible clause. I took up with my companies the matter of the execution of a proposed form of policy containing within it clauses providing for coverage for some but not all of the hazards to which a market agency is exposed in the transaction of its business, as set out in Respondents' Exhibit No. 25. I had considerable difficulty in having them entertain it for the reason that they term it an all risk under all circumstance policy. They

felt that was uninsurable and impracticable. I was not able to get any company to write such a policy. My own companies felt that they were covering, in various cover- [fol. 758] ages, some of the things expressed in this form and as to the others they felt that they did not care to entertain them. They felt that they were covering, and prepared to cover the compensation hazard and the public liability. The public liability refers to the people or general public which may get injured in the transaction of business or the property damage caused by livestock in the custody of the insurer when it gets loose and caused damage to property and persons.

I made an independent investigation of the availability of such coverage as is set out in the first indemnity clause in Respondents' Exhibit No. 25 in other lines of business such as the grain trade. I happened to learn that the grain people had made inquiry as to coverage in handling their gra-n shipments and made application for a bond. It was intimated to that that such a coverage might be obtained with reference to livestock sales on the public market. I obtained a copy of the bond as outlined to the bond people and I have it here.

We look upon the risk of loss arising from defect of title under the liability imposed by law on market agencies at the Kansas City market as more hazardous than the risk incident to defects in title in the grain trade. The grain trade is confined almost to wheat and corn. Livestock is confined to several different classes of hogs, cattle and sheep. I know very little about the situation of the grain trade with reference to losses and hazards that arise in [fol. 759] connection with any defect in title. It occurred to us that the title to wheat is very easy to trace from the time it is threshed to the market. A mortgage may be put on livestock by two or three people or by the same person to two or three different money lenders. There is an increased hazard by reason of the trucks coming along in the night and picking up livestock from pasture and bringing it to market and selling it. At the time the indemnity to grain dealers, outlined in Respondents' Exhibit No. 26, was cancelled, I had gotten up a form of bond which I felt would be applicable to the livestock industry and was urging consideration of it.

That letter was received from the Metropolitan Casualty

Company after the New Amsterdam Company had positively refused. This letter related to Respondents' Exhibit 27, which is a form of bond, or indemnity bond which I drew up on my own motion.

(Whereupon Respondents' Exhibits 25, 26 and 28 were received in evidence.)

Paragraph 3 of Respondents' Exhibit No. 25 refers to public liability arising out of the operation of a business in connection with injury to persons other than employees. That rate is 72¢ a hundred, based on the entire payroll. We have not had regular requests for such policies. Paragraph 4 of Respondents' Exhibit No. 25 refers to the liability imposed upon the assured to any principal for whom the assured acts as broker, agent, or factor, by reason of [fol. 760] such principal to pay the proceeds of such livestock sold.

Cross-examination:

I have been in the insurance business a little over 25 years. I have never been in the livestock commission business, and have never had a financial interest in the operations of the livestock commission business, except as they are related here. I am not an officer of any insurance company, and never have been. The major part of my insurance business is fire and casualty insurance, automobiles, and compensation insurance, fidelity bonds, and court bonds. At one time I had a partner in the business, but I am by myself now. I have had sub-agencies, but now I confine myself to my own practice. I have a bookkeeper and stenographer. 20 to 25% of my business is done at the stockyards. I get 20% of the premiums on the business that I write at the stockyards. That is paid annually. I think the coverage would run from $3,000,000 to $5,000,000 in bonds. Our work in writing shippers' bonds has doubled, as we have to make out an executed copy and furnish it to the Department in Washington. That is just within the last year. In writing these bonds we have to find out something about the individuals. We go over and talk to the banker.

By "financial guarantee" I meant the promise to pay for the proceeds of livestock coming into the possession of the

principal under the bond, and he has had to pay those proceeds to the shipper of livestock. I take it that fidelity [fol. 761] would guarantee his honesty, that he would not steal the money or divert it to his own use, and under a financial guarantee we might have to pay it, under some circumstances where he had no thought of stealing it. I construe the bond to guarantee the payment of the proceeds of the sale of livestock, even though the proceeds are never collected by the market agency. We have paid losses and we collected it afterwards. In other words, we have paid losses and we collected it afterwards. In other words, we have never delayed the payment of claim. I would say that we have had from ten to fifteen losses under these bonds since we began to write them in 1919.

Respondents' Exhibit No. 27 is the one I submitted the bonding companies for estimates. The gist of Respondents' Exhibit No. 25 is embodied in a letter to the company. Respondents' Exhibit No. 27 was submitted to my company the latter part of December. I have one letter pertaining to it, but I would not like for this to go into the record. In this letter I state that I have been in the business at the Kansas City Stockyards since 1902, and that during that time the losses have been almost nil. The main part of the coverage is on stolen or mortgaged cattle. That was addressed to the Metropolitan Casualty Company. It was the reply to this letter that I read into the record this morning, the date of which was January 8, 1931.

(Whereupon, Respondents' Exhibit No. 28, the same be- [fol. 762] ing the letter referred to, was received in evidence.)

The statements in that letter are applicable generally to my experience and knowledge of conditions at the Kansas City market. I write bonds on the Kansas City market for small packers, butchers, and one or two hog feeding outfits. I don't believe I have any public liability policies on the Kansas City market. I have not written any policies covering risks of bank failures. I have written some of the bonds with the coverage contained in paragraph 5 of Respondents' Exhibit No. 25.

Redirect examination:

The rates for fire hazard with respect to furniture and fixtures, and equipment of market agencies having offices

in the Kansas City Livestock Exchange Building is 73¢ on a hundred for the first floor, 78¢ for the second floor, 82¢ for the third floor, 86¢ for the fourth floor, 90¢ for the 5th floor, 93¢ for the 6th floor, and 97¢ for the 7th, 8th, and 9th floors. I had not been writing any mortgage and theft bonds on any company, or any bonds that are comparable with this one set out in Respondents' Exhibit No. 27. The Hartford has been writing those bonds. I meant in the letter that the experience has been remarkable, particularly as our experience in the bonds, and I wish to imply the experience in stolen and mortgaged cattle insurance, although we hadn't written it, had been good. With this letter I was endeavoring in every way I could, and by every method I could employ, to secure the consent of the Metro-
[fol. 763] politan to the quotation of a rate upon this coverage in Respondents' Exhibit No. 27.

Whereupon, the witness was excused.

W. C. Bradshaw, a witness called by the Respondents, after being sworn, testified as follows:

I am a cattle salesman employed by the Moffett Livestock Commission Company. Prior to the first of the year I was employed by the Witherspoon Livestock Commission Company. My work relates to stockers and feeders. I have been selling cattle on the Kansas City Livestock market nearly 15 years. Before that I was manager of the commission house at Wichita. I was manager and part owner for the last eight year-, and prior to that I was bookkeeper and salesman connected with the same firm.

Stockers and feeders must be sorted into their classes, their breeds, and their qualities of various buyers, and there is a very wide outlet for the stocker and feeder cattle, while the fat cattle are confined in their outlet to the buyers who buy for beef, such as the packers here and the order buyers who ship to the packing houses east. The stocker and feeder cattle go to the traders who buy that class of cattle here at the yards and trade on them. They may be sold to the commission houses or order buyers for their customers in the country or they may be sold directly to
[fol. 764] the country man who comes in himself and goes on the open market and buys his cattle.

There are times of the year when the light cattle from 400 to 500 pounds sell for more than an aged feeder weighing a thousand pounds, and then there are other times of the year when the aged feeder out sells the light steer. There are a great many times that the thin cattle and the stocker and feeder class will outsell the fleshy cattle. The light cattle weigh from 400 to 800 pounds and we usually call them stockers, and the cattle heavier than 800 pounds we usually call feeders. The cattle under 800 pounds are usually taken out to carry over and grow into larger cattle, while the cattle weighing 800 pounds and upward are usually taken to the feed lots.

As soon as it is light enough to see to sort, the stocker salesman needs to go to the alley and sort off stockers and feeders from mixed shipments, and sort the various breeds in each shipment, and then sort for age. If necessary, they should be sorted for quality. When he has made his classes of the various breeds of cattle, he is then ready to look these cattle over and arrive at what the value of them should be. In sorting the yardman must hold the gate for me. One man cannot sort alone.

The next thing we do is to arrange about watering the cattle and a good commission firm will take very good care to see that these cattle are watered in a way that will give them a chance to drink all that they want. The next procedure is to see that they have plenty of hay given to them [fol. 765] and that the bundles or bales are shaken up in the mangers so that they can readily get to the hay and eat it. Usually that action is performed by a yardman. While that is going on the stocker salesman rides through these cattle and looks at them very carefully. In the ordinary day's run the salesman is ready to begin to show his cattle probably about 9 o'clock. We get the receipts of the various markets at the bulletin board there in the building.

There are various buyers here at the yards who buy certain classes of cattle, and buyers who specialize in Hereford cattle very rarely will look at Shorthorn cattle or Angus cattle. The salesman knows all the buyers.

There is no obligation upon the buyer to hold that bid good after he has left the alley.

Last Monday we had 16,000 or 17,000 cattle on the yards, running largely to feeder cattle and there were not nearly

enough country buyers or orders in the market that day for these stockers to have cleaned them up. The traders stepped in and bought cattle all day. My firm had 31 loads of cattle that day, running largely to stockers and feeders, and they were all sold. My firm has three cattle salesmen at the present time, but one of them is not going to stay. The reason I left Witherspoon was because they wished to reduce their expenses as much as possible.

When we sell direct that way to a country man we clear [fol. 766] the cattle for him, give him a clearance ticket to the stockyards company, and we make a railroad shipping order for him. Our yardman attend- to the movement of the cattle, in so far as it is necessary. In connection with sales to traders we escape the necessity for finding out his financial ability to pay because we know all of them, and these cattle when sold are taken to the scales and weighed, either to himself or to his broker. Many of these traders pay for their own cattle. More of them pay through a broker.

No written memorandum of the price at which the different lots of cattle are sold is made prior to the endorsement on the scale ticket. The buyer is seldom present when I mark the price on the ticket.

The heavy runs of stocker and feeder cattle are from July to November.

It has been my practice for the Witherspoon Company to make a number of trips during the summer out into the Kansas and northern Oklahoma country and advise with customers, and while I am out there I get a very clear and concise, first hand knowledge of the supply and number that is out there. I get some information about the financial status of our customers as to whether the cattle are mortgaged or not. Usually we trust our customer, if we know him well enough, to tell us those facts. I find that the men in the livestock business, the owners and shippers of cattle, as a general rule, are honest and upright men. After a few years here on the yard we develop a system [fol. 767] which is the best in the way of handling, that is the shortest and with the least work, and with the least liability of any loss or mix up of the cattle.

We also develop a system or routine with reference to records that are kept. After our cattle are disposed of, weighed and priced, the stocker and feeder salesman helps

the other two salesmen to get sold out. As a general thing the force of salesmen stay togther until they are all sold out and the cattle are weighed. After that we go to the office and check the shipments to see that each shipment checks out properly, the number of head that were received. Then the bookkeeper makes up the account sales and we usually check them, and very often it falls to the salesman to write to the shipper a letter telling about the market, if he is not there, giving the conditions of the trading, and any particular points of interest that he thinks the shipper might like to know. There are various other letters that the salesman must write to the trade in the country, answering requests or writing market information which he thinks would be a benefit to his customers.

In the stocker and feeder business their receipts are light in the months of April, May and June. During that period we do work for the shipper or owner of these herds of cattle in connection with procuring pasturage in Kansas and Oklahoma. It has been my practice to make a number of trips into the Flint Hills in the grass country, down in [fol. 768] the Osage country to locate a lease for this man who does not care to make the expense of coming up here. Most of the grass leasing business is done on bunches of cattle of several carlots. No contract is entered into obligating him to ship the cattle to me or to my agency.

Nearly all of the railroads have feeding stations just outside of Kansas City where a great many of these cattle stop to rest and feed over a day or two, and a great many times we drive out there for the convenience of the customer to look at them and see if they should be sorted before they come to the market and not infrequently we take a buyer and sell him the cattle out there.

There has been a great change in the marketing of cattle which has affected the amount of work that has to be done per head or per carlot basis by a market agency in disposing of them. Ten or fifteen years ago cattle came to Kansas City in much larger strings, all of one ownership, all of one brand, and did not need very much sorting. It was not uncommon then to receive a whole train of cattle and sell it at one price to one buyer. At the present time they have to be sorted up and one buyer will buy two or three cars maybe, and there is not nearly as much big strings. They come in single carlots and more mixed

ownerships, and that makes a lot more work. There is also a wider price range between the lower and higher grades than there used to be. The salesman has a wider [fol. 769] price range to keep in mind, and in the higher priced class of cattle the buyers are more particular that their work must be just so because he is paying a big price for it. In view of the larger abilities that the commission man or agency and his salesman must have, and in view of the wider range of his responsibilities and his activities, and the larger volume and kind of work that he must do now as compared to heretofore, and with the cost of living that his employees must pay, and therefore the salaries that the agency must pay his employees, I should think that surely it would not be justifiable to reduce the commissions. In my work in the country I have talked to a number of prominent stockmen that have invariably told me that they would not like to see a reduction of commissions here to the extent that it would curtail our services to them. Their primary interest is in obtaining and continuing to receive a high class service in connection with the sales of their livestock. In my judgment they would look with disfavor upon anything that would tend to reduce the rate at the expense of the service.

Cross-examination:

In connection with my statement in regard to the larger volume and responsibility of work, I had in mind the mixed variety of shipments, the many more classes in each car, and the many more ownerships in a day's run than we used to have. The yardmen in my alley do not sort any at all prior to my arrival at the yards. The three salesmen of [fol. 770] us go to the yards every morning with the first yardman. Two of us sell steer cattle, and the other one sells the butcher stuff. I am not an owner in the Moffett firm. Probably I spend three months during the year in the country visiting customers in the various work of appraisal and grass leasing, and all of that sort of thing. I do not visit all of my customers. I determine by correspondence which ones I will visit. If they have some cattle that they want advice or accounts in regard to, we try to make it a point to get to them. We try to get to all of them that request us to come.

I sold two loads of fat cattle yesterday. We have tele-

phones out in the yards so we can communicate with the office and with people in other parts of the yards. We know approximately about what is being carried over each day, both in first hands and in second hands.

Last Monday we had 31 cars, and we sold all except ten head that day out of two different shipments. The three of us sold them. In addition to those we had three loads of corn fed cattle, and I sold all three that day. It was a rather large day's business for this firm. I have a following, or clientele, that ship their livestock now to the Moffett Company instead of Witherspoon. I do not know how large a following I will have. I would like for all my friends to stay with me. They are people that I have been acquainted with and have known in my work for a number of years. We also had about 17 head of trucked livestock [fol. 771] last Monday, and I think we had eight account sales for truck shipments that day.

Redirect examination:

The widow of Mr. Moffett has considerable knowledge herself of the office work incident to the conduct of a livestock commission business.

Recross-examination:

I have been looking after pasture leases for a number of years. Our service does not end when we lease this grass. Last summer I went through the strings of Texas cattle we had on Kansas grass seven times to check the water and the grass, and to see that the cattle were being properly cared for. All that service was in addition to the grass leasing and for the interest of the customer with no charge. The customer leaves that largely to the commission firm, and we do the cutting and shipping at the time of marketing. The responsibility of a salesman is multiplied in proportion to the number of cattle that he has to sell. A salesman is at his most efficient point when he has enough cattle so that he knows the value and condition of the market. I should say that a salesman selling a number of loads of cattle each day would be better posted and in a better position to get the most for his customer, on the average, than the man who has one or perhaps two loads of cattle a day, and maybe one or two loads of cattle a week, but there is a point at which the efficiency of a salesman is very ma-

terially reduced when he has so many loads of cattle that he cannot give any of them the proper attention, proper [fol. 772] care, and proper sales ability. I feel that our force was able to sell the 31 loads last Monday efficiently. We were down there Sunday all day arranging the pens and feed, and getting organized for the Monday morning work of getting the cattle ready to show and sell. We had almost all of them in their separate classes, ready to show the buyers, ready to trade early, and had feed by them all night. We had to do some sorting on Monday morning.

Whereupon the witness was excused.

FRANK WITHERSPOON, JR., a witness called by the Respondents, after being duly sworn, testified as follows:

I have been engaged in the livestock commission business at the Kansas City market since 1902. I am vice president of the Witherspoon Livestock Commission Company, which is a corporation. The stockholders of the corporation are Frank Witherspoon, Graham Witherspoon, Geo. W. Sanders, Jr., and myself. All of these men are actively engaged in the conduct of the livestock commission business. The president of the company, Mr. Frank Witherspoon, started in the commission business in 1897. Before that time he was engaged in the handling of livestock on the ranges and feed lots. He moved to Kansas City and formed a partnership with a man by the name of Timmons, under the title of Timmons and Witherspoon. This partnership lasted until about 1901, when Mr. Witherspoon sold his interest in the partnership and worked for Evans, [fol. 773] Snider, Buell for a year. Then he started in business for himself, and has been actively engaged in the commission business at Kansas City and other markets since that time. Mr. Geo. W. Sanders, Jr., started his activities during the year 1901. He worked for the Cassidy Southwestern Commission Company, a Fort Worth Livestock commission company, and the Neil McMullen Livestock Commission Company, which, during 1914, was absorbed by the Witherspoon McMullen Commission Company. The Witherspoon McMullen Commission Company continued under that name until 1922 or 1923 when the name was changed to the Witherspoon Commission Company.

Graham Witherspoon started his activities with our company during the year 1914. After I graduated from school in 1902, I acted as an office boy, or bill clerk and bookkeeper. I did all the office work for my father for about two years, after which I started to run trains. I ran trains in the mornings and kept books in the afternoon for about a year to a year and a half. Later I did general yard work. During 1908 I began to sell a few cattle, and by 1910 I was selling a good many of them, at which time I was transferred to Oklahoma City to take charge of our office at that market, where I sold cattle, hogs, and sheep for a period of time. I was in Oklahoma City until 1913, at which time I was transferred back to Kansas City, where I have been selling cattle a good part of the time in one division or another. I have also been active in the office work, and in the loan department when our company was [fol. 774] making loans. It is my personal opinion that the loan business carries with it quite a hazard. Between about 1919 and 1922 our company lost many thousands of dollars. I do believe that the operators at a market should do all that they can to secure loans for the patrons, but the loan business within itself carries with it such a hazard that I would not care to indorse the paper.

During 1929, Geo. W. Sanders, Jr. spent practically all of his time selling fat steers. I divided my time between the sales alleys in the cattle division, and in the office work. Graham Witherspoon spent a good part of his time selling calves, and the balance of it was spent in business maintenance. Frank Witherspoon had charge of what loans were made, together with general executive duties of the company. The most of our business in the fall of the year originates in Texas, Oklahoma, and from the pastures of Kansas. I have served on a good many of the committees of the Kansas City Livestock Exchange, and have been president of the Exchange. During my official connection with the Exchange, I had occasion to make a study of what is known as direct buying by packers. Before I was elected to the presidency of the Exchange a study was made by a committee of the direct buying question as it related to the shipment of hogs made to the Mistletoe Stockyards, owned and controlled by the Armour interests. It was thought by the committee that Armour encouraged these direct shipments of hogs to the Mistletoe yards for the purpose of

[fol. 775] obtaining a sufficient supply of hogs in order to pound the public market with the idea in mind that they could mark their hogs on the public market basis. The slowness on the part of Armour buyers in their buys on the market and their general conduct showed to us, without a doubt, that that was their purpose. It was also shown that the supply at Mistletoe was increasing and that a good many hogs that should come to this market went to Mistletoe. It looks to us that this direct business has increased to such an extent that it enables the packers to take advantage of it. The Kansas City Livestock Exchange has considered this direct buying a menace, and it filed a complaint with the Department of Agriculture against the Armour Packing Company. That complaint was under Docket No. 1. About that time the National Livestock Exchange was contesting the constitutionality of the Packers and Stockyard Act. The Kansas City Exchange has always felt that the Packers and Stockyards Administration had a right to supervise our market, and we felt that we were acting within the law when we took advantage of the law in filing a complaint. It has been the policy of the Exchange here to cooperate in every way that we can with the Packers and Stockyards Administration in assisting them to enforce the Act. A hearing was held on this complaint and a decision was rendered by the Secretary.

Paragraphs two, three and four, appearing on page four of Respondents' Exhibit No. 2 relates the methods that are [fol. 776] used by the packers in buying their hogs direct.

As a result of this proceeding, entitled Docket No. 1, the private yards of the packers were not posted as public markets. From a competitive standpoint, it is my opinion that this method of acqu-ring livestock for slaughter by packers has a direct effect upon the cost of operation of market agencies at Kansas City, and, in fact, the packers can, through this method, secure a supply of hogs and use that supply in depressing the open market. It has a further effect upon the market in the fact that the volume of directs handled by these packers should, in my opinion, come to the market, which would increase volume and reduce unit costs.

The complaint filed by the American National Livestock Association entitled Docket No. 12, was filed just prior to my administration as president of the Exchange. Just

after I was elected president of the Exchange, Mr. J. H. Mercer, secretary of the Kansas Association, discussed this complaint with me. Mr. Mercer was of the opinion that not only rates should be considered, but methods and practices of the Kansas City market should also be considered. After some correspondence a conference was called of the representatives of the different Associations throughout the Kansas territory, and representatives of the Packers and Stockyards Administration. Some amendments were proposed, and they were immediately put into effect by the Kansas City Exchange. The matter of rates was left to [fol. 777] arbitrators. A stipulation was drawn up to the effect that the books of commission agencies would be accessible to the Department, together with any assistance that the market agencies could render in helping to gather the necessary information for the investigation of rates. Representatives of the American National Livestock Association signed a stipulation. The rates set out in the decision of the arbitrators have been in effect in the transaction of the business of the Witherspoon Livestock Commission Company since that time. In my judgment, nothing has occurred since that would cause rates reasonable at that time to become unreasonably high at the present time, or as of 1929. I think the reverse would be the case, on account of the fact that the volume is less, and other conditions around about the business require better service. At that time there was not such a demand in the handling of these straight car shipments as they related to grass leasing. At that time a good many of the shippers from the Southwest secured their own grass. Another thing that enters into the case, as compared with them would be this demand on the part of the packers to order lotting numbers, and other additional yard work that we did not have to contend with at that time. When this award was made we did not have as strong a competitive situation on the part of the cooperative as we have now. At the present time we are confronted with Farm Board competition. The operator spends money in assisting the patrons of the market [fol. 778] in getting credits for him, and in other ways, and then through the unfair competition of the Farm Board, loans are obtained by the patrons, which means an absolute loss on the part of the operator on account of the time spent and the expense incurred previous to a loan. The increase

in the proportionate volume of hogs that passes around the market to the packers for local slaughter will work to the disadvantage of the operator in his cost of operations.

I was president of the Exchange when the complaint was filed in Docket No. 39 concerning the controversy between the Exchange and the Farmers Union Livestock Association, the Producers Livestock Commission Association, and the United Shippers Livestock Association. Dell Hubbard was a member of the United Livestock Shippers Association. He misused, or rather misapplied funds of patrons to his company, and the Exchange expelled him. He was then operating as the Dell W. Hubbard Commission Company.

Prior to the formation of the Kansas City Exchange around 1886, we had what was known as the shotgun market here. After the Exchange was formed, the hog docking was put into effect, which corrected some of the evils. I can say that considerable time has been spent by the members of the Exchange over the last 46 years evolving methods and practices that would be helpful to the patrons of this market, and would be economical and efficient from the standpoint of the agencies themselves. These methods and practices have come into use through evolution as con-
[fol. 779] ditions change. I have prepared a statement of a system of established and proven methods employed in the conduct of a typical market agency business at Kansas City. They are described in the Exhibit which has been marked for identification as Respondents' Exhibit No. 29.

(Whereupon, the witness proceeds to describe in detail, and read from the Exhibit with respect to the practices and the forms used in the conduct of a commission business. Inasmuch as the Exhibit speaks for itself, testimony from T. 4702 to T. 4728 is not here set out.)

All the forms referred to and contained in Respondents' Exhibit No. 29 come under my personal observation in connection with their use in the commission business. The statement descriptive of methods and practices, appearing on pages one to 28 of this Exhibit, was prepared by me. In this statement in Respondents' Exhibit No. 29 certain yard locations are referred to. The purpose of the blue print, which has been marked as Respondents' Exhibit No. 30, is to show the particular locations of different places in the yards where the operators, or market agencies come in con-

tact with methods and practices in yard operations. The selling yards of the commission agencies begin at Alley 5 and extend to the south along Genesee St. to the extreme south end of the yards, or Alley No. 39, and west to practically the State line, which is the 3d alley from the east side of the yards. In looking at this chart it can be seen [fol. 780] that the main selling yard of the market agencies is long and narrow in construction, which indicates that great distances have to be traversed by the market agencies within that particular area.

I asked Mr. Roberts to figure out the one million seven hundred and fifty thousand variations of grade and quality, as shown on page 10 of Respondents' Exhibit 29. I would say that in some cases the variation would be slight, but the reason I referred to it was just to show the approximate number of variations that would enter into sorting and grading.

On schedule 2 of Government Exhibit 14-73, the designations of the salary under the heading of "office", that is descriptive of employee No. 4 refers to my father's salary. No. 1 refers to mine; No. 2 to Mr. Sanders; No. 3 to Graham Witherspoons' salary. I am certain that some of the owners could get more money in other work or in similar work. In connection with those amounts were considered such dividends as might or might not accrue upon the stock as supplementing such compensation as was indicated here for personal service actually rendered. The capital of the Witherspoon Livestock Commission Company is $10,000, and the surplus is $34,644.52. This capital and surplus were built up since the Witherspoon Commission Company was organized but the Witherspoon Commission Company assumed some very questionable paper of the Witherspoon McMullen Commission Company. Fortunately some of that [fol. 781] paper was collected and naturally reflects into that surplus. We also contributed personally to the capital stock from our own funds in the organization of this company.

My firm sends out market letters. We have an index file down at the office that shows the names of those who ship to us. We take that list of customers and add to it the names of the prospective customers and send to the combined list what we call a market letter. In that market letter we try to give the trade helpful facts so that the trade

can by reading it judge the market conditions. We usually include crop reports, economic reports, and any other helpful information. In the operation of our business we endeavor to keep expenses for business getting and maintaining, as well as all other forms of operation expenses, at as economical a figure as it is possible to do.

If we would rely on a capital of around $7,000, as shown on page 110 of Government Exhibit 15 for firm No. 73, to run our business, we would be broke by August every year because the nature of our business is such that we have a loss on account of the fact that it is seasonal, and that loss varies all the way from $5,000 to $10,000 before we begin making any money, and that is not all of it. There are other items that would have to be considered in handling invested capital or to establish credit that would necessitate considerably more money than the amount you referred to. Mr. Roberts came into our office and asked us for an analysis of what capital we need or require, but I was unable to [fol. 782] give it to him, and the reason was that it happened through 1929 that I was director in an uptown bank and they did not keep any such analysis or charge us on any floats. We carry on our books furniture and fixtures at $1,371.29 as of December 31, 1929, but that by no means represents the fair value of the furniture and fixtures. An appraisal has been made of the furniture and fixtures. The Witherspoon Commission Company owns six memberships in the Exchange, and each of the stockholders use four of these firm-owned memberships, and two of our salesmen use the other two.

The item of $6,500 appearing here on this balance sheet on Exhibit B of Government Exhibit 14-73 is not representative of the replacement cost of the memberships which I mentioned. I did not rent one of the six referred to because the firm owns those six memberships but we rented a membership for Mr. Tom Swartz who is in our employ. I believe the rental on Mr. Swartz' membership is $20 a month, and according to the statement on Exhibit C it would look as if there is a difference of $20, but my guess would be that we probably paid one month in advance, which would make that difference. I did not examine critically this blue audit after it was made up.

Our company offered livestock to the Producers Commission Association and the Farmers Union Livestock Com-

mission Company at any time their buyers appeared in our alley and wanted to buy. In fact, during the period from [fol. 783] 1923 to 1927 we sold cattle to the Producers when they were not members of the clearing house. We had to present our bills to them at their office, and of course we demanded a cash payment. I recall definitely one sale of a considerable amount that we made in that manner and collected in that manner. There was greater difficulty attached in making our collections in that manner than in trading with ordinary agencies on the market. When we trade with members of the clearing house it is very easy for us to make our collections, especially for our firm which is located on the same floor with the clearing house. When the market practice agreement was signed by those firms, trading with reference to those firms was put on a sound basis.

Cross-examination:

Referring to Schedule 2 of Government Exhibit 14-73, cattle salesman No. 1 is myself. I am registered with the Exchange as a cattle salesman because I spend a good part of the morning in the cattle alley. I do not actually sort or grade cattle but I am in the different alleys conferring with the salesmen and helping consummate trades. I work in the butcher alley, the stocker and feeder alley, fat alleys, and calf alleys. At times I would say that I actually consummate the sale because the salesman comes to me and says that he is bid so much on a bunch of cattle and asks me to go to the pen with him. I go into the pens with him and we together decide that it is either too low or not enough, and at times I confer with the customer before the [fol. 784] sale is consummated. I don't do that every day. During the rest of my time I am in the office on the executive side of the business or working on business maintenance. Some years I spend much time in the country and others not so much because conditions have an influence as to the time I go to the country. It depends on the demands of the trade. I do not make what is generally known as regular soliciting trips. When the patrons of our company write me and ask me to go down in their particular country to look at cattle, I go. Of course, while I am down there I might look at other cattle. That is what I call an appraisal trip. The longest trip I make on appraisal work

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is in the early summer, but I am making those trips during the entire year. In the early summer I go down into Texas or far off points.

Cattle salesman No. 2 is George Sanders, who is our head salesman in the steer alley and more or less directs the practical operations of the yards and has charge of the yard force. He spends the major part of his time in the actual selling. He does some appraisal work but not nearly so much as I do.

Salesman No. 3 is my brother who is the calf salesman. He devotes the major part of his time to selling calves, and some of his time in office work and some of his time in appraisal work. Appraisal work is done on all classes and grades of cattle, as well as on sheep and hogs. We do it whenever our customers request it. In our case it would be [fol. 785] rendered only upon request in 90 per cent of the cases. Our calf salesman has been engaged in the business since 1914. He started right here in the yards doing that work. He assisted in train running. He continued in that capacity about a year and then did general yard work. He became an owner about 1919. He continued as a general yardman for two or three years and then began to sell odd and end cattle, crips, and things like that. He did that just a short time and then we worked him gradually into selling the calves. During the time he was selling calves, he also assisted in the yard work. During all these times he drew salary from the time he started.

No. 4 is my father and he devotes practically all his time to the office duties in executive and managerial work. Non-owner cattle salesman No. 5 is our butcher salesman. He has been with the Witherspoon organization since around 1913. He has been at the Kansas City yards since 1908.

Cattle salesman No. 6 was Mr. Bradshaw who sold stocker and feeder steers. He is not in our employ at this time, and my brother who was selling the calves has been promoted to the position of stocker and feeder salesman. Mr. Albert Sanders, who was our yardman, now sells the calves for our firm. It is the policy of our company, as well as many other companies, to promote those who are qualified to be promoted. We did not take on any new help when Mr. Bradshaw left us, and the reason we are doing this is because we are trying to run our business just as economically as [fol. 786] possible. The brother of our head yardman went

through the training of train runner, general yard work, and was promoted to the job of head yardman. One day he fell from the top of a fence and hurt himself so we had to provide a position for him in our organization. We let him be an assistant to our bookkeeper.

Employee No. 7 is Mr. T. C. Swartz who is a cattle buyer. He gives his time to buying and some to office work and appraisal work.

Employee No. 8 is our hog salesman, G. O. Foster. He came to the yards sometime during 1903. He started as a train runner in the cattle yards. He worked up to the general yard work and was transferred to the hog yard. All this was done while he was in the employ of another firm.

Employee No. 9 is designated as a cattle yardman. He is the head yardman who has been stepped up to calf salesman. Employee No. 10 is the one who has been stepped up to head yardman. Employee No. 11 is our jack pot yardman. He devotes practically all his time to jack pot transactions. He helps some in load outs. During 1929 we were having a little trouble with train runners and we had to let one man go, and part of that time we used some of our regular yard help in filling in that period. The purpose of doing that was to keep down our expenses.

In connection with employees Nos. 15 and 16, one of them [fol. 787] got sick and we had to hire another one. Employee No. 17 is a bookkeeper. Our bookkeper who had been with us about 23 years left us in December, 1928, and we hired a bookkeeper who had formerly been with the National Commission Company. Employee No. 18 is our stenographer who has been with us since 1918. She handles the telephone, receives instructions from the yards regarding car orders, and handles some of the telegrams that are received by the company. Employee No. 19 is a clerk who was with us about six and a half months.

On account of our seasonal business we usually get along with one bookkeeper during the early part of the year and during the latter part of the year we hire temporarily a clerk to assist him. The same situation is true with respect to employee No. 20, who worked just one month. Our night yardman is paid on a basis of fifty cents a car for the cattle he receives during the night, and he also works for other firms. We pay the head yardman who handles our night business from the drive in chutes on a basis of five cents a head for each bunch up to bunches that would yield $2.00,

and there is no charge above that. On the drive in cattle we pay ten cents per head, with no limit. A man by the name of Duncan handles our drive in hogs, and a man by the name of Crow receives our drive in cattle. During the fall months we have a heavy business so we hire extra yardmen to assist our regular employees.

Our surplus has been accumulated since about 1922 or [fol. 788] 1923, but that is not a surplus accumulated through the profits of the commission business. It so happens that we were fortunate in realizing a profit out of some of the assets that we bought from the old firm. Our volume in 1922 and 1923 was much larger than it is now.

Referring to page one of Respondents' Exhibit No. 29, our company has had many experiences that would come under the subhead A under the subject of hazards. I am unable to tell the amount of loss that our firm has sustained since it was organized under this corporate name on account of the first hazard mentioned. Several years ago we received a telegram from an eastern packer to buy some cattle for him according to a certain description. We bought those cattle according to that order, shipped them to Boston, and he wired that he would pay the draft. The buyer proceeded to kill the cattle and a few days later he turned down our draft. We hired an attorney in Boston and attached the beef until we got the matter straightened out. We lost several hundred dollars on that transaction but I cannot recall the exact amount. I don't remember the date but I think it was around 1923. Just recently a man in Nebraska wired us to buy some hogs for him. We wired the bank and the bank wired back that the party could pay the draft all right, and we 'phoned this buyer and he agreed to pay the draft. The next morning we wired the bank to find out if it would pay the draft, and we received a message from the man for whom we were [fol. 789] buying the hogs telling us to keep them. The market was declining and we had some difficulty in selling the hogs. Figuring the loss on the hogs and the time spent in the resale, the sum total of the loss was $85.00. In 1925 we shipped some heifers to a party in Cincinnati. When the heifers reached the point of destination the market had declined and the purchaser refused to pay the draft. We had to have the heifers shipped on to a nearby market and the loss was around $200 or $250. The loss on the shipment

of cattle to Boston was around $500. I cannot recall any other experiences where I could relate anywhere near the loss. Most commission firms do everything they can to avoid that hazard when they purchase livestock. They wire to find out if the bank will pay, but the trouble is these banks do not always pay. We have never required the money to be put in the bank here in Kansas City before we fill the order. I think if we did we would be unable to fill any orders because the country is more or less sensitive over a situation like that. In my opinion, the buyer would not plank down the cash or the equivalent cash before the order is filled. He is used to doing the business the other way. We have to take the chance to stay in business. I have not had any losses on account of the failure of big packers to pay for livestock sold, but I have been scared to death one or two times. Recently an item of one of the big packers was held up for two or three days, but that is very unusual.

[fol. 790] With respect to the next hazard which is the guaranty of title to all livestock sold. I do not recall any losses that we have had on stolen cattle, but we have had expenses that are chargeable to that particular hazard. About two years ago there was some cows shipped here from out in Kansas and we did not have the mortgage and theft coverage. It looked to us as if there was a mighty good case against us and we had to hire a lawyer which cost us $150. We carried mortgage and theft insurance from about 1919 to about 1925 or 1926. Then we did not carry it until after this incident happened to us which I have just related.

With respect to the next hazard under the heading of mistakes made in freight charges or other items in office work, that particular item exists in the commission business. We have had some experiences where railroads have undercharged and where we have been threatened with suits. There have been suits placed in judgment against us, and there have been items where our bookkeepers have made mistakes and over remitted to customers. I cannot recall the exact amount of them, but they exist. We always attempt to adjust mistakes made in remittances, but we do not always succeed in settling it. In a good many cases we do make a settlement. Since I started this particular testimony, I recall a case where a man shipped to us and

represented to us that the cattle were of a certain weight and we paid the drafts. That particular shipment lost a [fol. 791] thousand dollars. We tried to collect that item but we have not gotten it yet. I do not remember the year that it happened. We try to collect them for two years, and if we cannot secure a man's note, we might as well assume the loss. Those instances do not happen every day, or sometimes every week.

With respect to the next item of collections of livestock where banks may fail in the course of collection, our agency has not had any losses on that item since 1923, but other agencies have.

With respect to the next item under the heading of sale or purchase of diseased livestock, our particular firm has not had any losses under that particular item, but I do not want the reviewer of this case to get the impression that our firm's experience is the similar experience of all firms on the yards. The hazard exists. I remember some years ago we shipped some cattle to a man in Missouri and before the draft was paid the other part of the cattle remaining here were condemned for scabby, and the farm in Missouri was quarantined. Our draft was turned down and we had to make an adjustment. I think that was along in 1920 or 1921. The adjustment cost us a few hundred dollars, but I forget the exact amount. I think that the hazards related in this particular paragraph are just a part of the business and even though an operator shows due diligence and care, they are present just the same and I think that every operator at Kansas City does his best to [fol. 792] eliminate as many of these hazards as he can. I would say that management has something to do with any enterprise, but I want it understood that these hazards are ever present. It is my observation that these men start in and work at one position for these stated periods and then are stepped up to the next position.

According to the rules of the Exchange the individual operators cannot broadcast their sales, but broadcasting is done by the Kansas City Exchange three times a day, and the members of the Exchange give to the Secretary actual sales that have been made, and he broadcasts this information to the country at large. I feel and know that the policy of the Kansas City Exchange has been to reduce expenses as much as possible because the members of the Exchange

realize that if the commission agencies were left to spend money at will, that might reflect into the commission rates. That policy relates on back for many years. The policy of the Exchange has been to keep all unnecessary expenses down so that the market agencies could render a high class service, especially so far as those expenses related to items that were not very important so far as actual service on the yards was concerned. It is true that if you were to eliminate all those expenses there would be a reduction, but it would be very unwise to eliminate the service that a customer to a market could have and, as the members of the Exchange have always contended, we are to perform services for the patrons of this market and we must incur [fol. 793] certain expenses in rendering certain services and although it might reduce and will reduce certain items of expense, that will not amount to a lot but it will amount to a lot so far as patrons of the market are concerned in giving him certain services that he is entitled to. The market agencies could enjoy the benefit of the curtailment or elimination of certain expenses but they do not enjoy it as a whole because if they would eliminate these expenses on the side of the ledger they might be doing the thing that would reduce their gross earnings on the other side to an equal amount. I mean by that that they do reduce expenses but by performing an inferior service to the trade, but to the extent that we have entered into an arrangement whereby we curtail certain expenses, it is the combined judgment of the market agencies that you do not curtail the service. If we would go still further and curtail other expenses, we would affect the service and that is what we are here for. To the extent that we have curtailed what may be considered unnecessary expenses, the market agencies have benfited, but I want to add, that, in my opinion, this benefit has been passed on through rates to the patrons of the market, or expressed, otherwise the agencies in the last analysis do not receive any direct benefit, as this benefit is passed along.

The market agencies at the Kansas City market are doing their best toward efficiency. With respect to the timely provision for labor, referred to on page 5 of Respondents' [fol. 794] Exhibit No. 29, I want to state that volume within itself is not the whole controlling factor. There are other elements besides volume that must be considered, namely,

the kind of business done, the way the livestock is received at the yards, and removed to the sales alley. If the trains come in all during the day, that situation would affect the amount of labor necessary and the bad weather conditions have some effect on the amount of labor necessary, and too spasmodic receipts or seasonal business has a further effect upon the labor necessary.

Redirect examination:

The cost of handling livestock, from my investigation in 1929, was around .85 of 1% in Kansas City, and I know it to be a fact that the cost of handling other commodities is higher, and that is the reason I put in the statement on page 18 of Respondents' Exhibit No. 29 to the effect that the market agency service is incomparably greater in value to the user than the amount paid therefor. As to the statement in regard to the unavoidable increase in expenses, by reason of the long and narrow construction of the yards, it should be a matter of common sense that there would be conflicting inter yard traffic more than when the yards are constructed more in the square shape. This long and narrow construction necessitates extra time spent by salesmen in hunting buyers, and it causes extra time on the part of the buyers in hunting particular lots of cattle that suit their demands. It takes a longer time in training running. [fol. 795] At Wichita the construction of the yards is more in a square shape, and the handling of different species there does not require the time of the agencies in driving them through the yards, or in handling them through the alleys where there is not so much conflicting inter yard movement as at Kansas City. The yards there are much smaller, and the livestock can be handled with greater dispatch than at Kansas City. I am unable to recall all of the claims that have arisen on these hazards referred to on page one of my narrative, Exhibit No. 29. I think it would be impossible to cope with the situation unless we had this organized system that has been referred to in this Exhibit No. 29. I have tried on several occasions to see if we could get insurance that would cover all these hazards, but have not been able to do so. We carry liability, public liability and property damage insurance on my personal automobile. I have never had any accident in the operation of my automobile wherein any person was injured. I do not use my

past experience in respect to accidents as a guide in determining whether or not I should take out public liability automobile insurance. I consider the recent action of the Exchange in prohibiting expenditure of money by market agencies for subscriptions to market papers in line with the other rules of the Exchange regulating competitive expenditures. The elimination of that expense has been criticised by some of the patrons of the market who ship to [fol. 796] other markets where they are incurring that expense. I think the reduction of expenses in that particular instance has in a degree affected the volume of business that would otherwise come to the market. According to the information given to me by some of our employees, some Nebraska shippers have shipped to other markets on that account. The prohib-ting of broadcasting by radio by individual market agencies is also in line with the general policy to reduce expenses.

With respect to the responsibility and work that attends the execution of the service by the owners of the business as compared with the employee who has no interest in the business, my opinion is that the non-owner or employee, is not called upon as frequently as the owner in performing general services. The owners of the agencies usually work early and late. In my own case, on a good many occasions I have been compelled to spend a good part of the night in performing the services in the way of answering long distance calls, and so forth. I think if an owner is willing to get up at around five o'clock in the morning and work until one o'clock at night, if necessary, he is beginning to qualify himself as a commission man. The expense of our firm on account of the kind of business we handle, in my opinion, is larger than the expense of a firm that is operating in what is known as a native territory, because it just costs more money to travel those long distances. We would have desired to increase some of the salaries that are paid em- [fol. 797] ployees if we would have done so within existing income, but it has been our policy to keep our expenses down just as much as possible and retain our personnel. Some of the employees of our company, in my opinion, could have at times received more money from other institutions. According to Government Exhibit 14-73, my firm paid a $6,000 dividend in 1929. That dividend was not paid out of the earnings of the commission business, but out of

the surplus that was earned through the sale and liquidation of property that we had sold in handling the old deal that I referred to this morning.

All education that I had was in High School, and Commercial College education, and legal education.

Recross-examination:

We try to run our business just as efficiently as possible and feel that if our company during 1929 had earned a little more money than they did, we probably would have advanced the salaries of our employees. We are very careful in advancing those salaries, because we want to keep our expenses down just as much as possible. I have not noticed a lot of competition for services of our men as far as our men are concerned. Mr. Sanders was offered more money to go with another company, but he stayed with our company. At a reasonable salary I think an efficient salesmen or an efficient yardman can get employment. Service is what attracts shippers to a market or to a market agency in my opinion. A good many times on Friday and Saturdays we put in less than eight hours a day at the market.

[fol. 798] (Whereupon the witness was excused.)

C. G. Myers, a witness called by the Respondent, after being sworn, testified as follows:

I live in Chicago, Illinois, and I am a practicing attorney. I have been engaged in the practice of the profession of law since June, 1914. During the last eight or ten years I have devoted a great deal of time to the problems involving livestock commission merchants. I have been employed for the last ten years by the Hartford Fire Insurance Company in defending commission merchants for claims and conversion suits, and other suits brought against livestock commission merchants. I have represented quite a few commission merchants in suits brought against them, in which they have no protection or liability. I represent the Citizens Insurance Company, and have been employed at times to defend different litigations for the Niagara Insurance Company, the Connecticut Fire Insurance Company, the Citizens Insurance Company, the St. Paul Fire and Marine,

the National Fire Insurance Company, and several other insurance companies. My practice has taken me into a great number of the different states and jurisdiction in the Middle West. I think I am familiar with the law in these different states. The Hartford Fire Insurance Company writes a policy insuring the livestock commission merchants, according to the terms and conditions of that policy, [fol. 799] against losses from receiving and selling mortgaged or stolen property, without notice, or knowledge of the fact that it is stolen or mortgaged property. On their behalf I have defended actions brought against various commission companies insured under their policies. I have also defended commission firms who were not insured and in which an insurance company was not involved in any way. The standard form of mortgage and theft policy now being issued by the Hartford Fire Insurance Company to market agencies only protects a livestock commission firm for loss from selling mortgaged and stolen property where the livestock commission firm has no notice or knowledge, at the time it sells or purchases the livestock, that such livestock is either mortgaged or stolen. It happens sometimes that some employee of a commission firm gets notice of the existence of a mortgage. Later that mortgaged property is by the mortgagor shipped to the commission firm for sale. That employee fails to protect the mortgagee's rights. Such a loss would not be protected by this policy. Then too the policy requires the giving of notice when a claim is first presented, or when suit is first brought. Then, too, there are other defects in the title besides mortgaged and stolen property. Property can be subject to a lien. Also a commission firm can handle embezzled property. Of course there are hazards in selling the livestock which do not arise out of the defects of the title. This policy would not cover the hazard of a defect in title to livestock arising out of the administration of an estate. I am familiar with [fol. 800] the expenses that attend the conduct of litigation and the expense of the investigation itself. The defense of litigation is very expensive. It involves, first, the investigation of facts. Then, there must be an investigation to determine the validity of the mortgage. After that the question must be determined as to the relation that existed between the mortgagor and the mortgagee as to whether there was any waiver of the mortgage lien, or whether there

has been any ratification. The evidence is scattered in several different places, requiring the transportation of witnesses, and the taking of depositions. We had one particular failure in western Kansas in which I defended a large number of suits brought against the farmers who had come to the market and bought cattle, and the cattle were practically all handled by one commission firm. After different replevin suits were disposed of, a conversion action was brought against the particular commission firm. All that litigation I would estimate the cost of defending was in excess of $20,000. The major part of that expenditure was made through our office. That particular commission firm was in business at St. Joseph. Subsequent to that failure there has been a bank failure in Kansas that involves another commission firm at St. Joseph, and some commission firms in Kansas City. The firm involved at Kansas City is the Wilson Egan Commission Company. The National Livestock Commission Company is also involved, but [fol. 801] it was not protected by insurance. I do not know that I have handled all the claims that settlements have been made on, and I could not recall all the claims that settlements have been paid. I remember one mortgage claim where I compromised for them in litigation and paid $4,500 for one commission firm. That was the case of the Drumm-Standish Commission Company against the Farmers Union Livestock Commission Company. I am not sure about that, and I am not positive whether Kansas City was the point of the sale and distribution of that property. In the past eight or ten years matters have arisen involving this coverage amounting to a million and a half dollars. I do not know the amount my company paid out in settlement of those claims. It seems that these claims have grown extensively in the last few years. It seems that the marketing of livestock by truck has contributed more to it than any other source. I consider the risk assumed under this policy a very hazardous risk, because of the liability imposed by the law upon commission merchants, the fact that there have been two failures here in western Kansas, and the fact that there has been more misappropriation of mortgaged property in the last three or four years. Furthermore, the statute of limitations is five years. I never heard of this coverage except for one company. The lia-

bility of the Hartford Fire Insurance Company under its mortgage and theft policy is limited to the actual price, or the amount of the proceeds for which livestock is purchased or sold. A commission firm assumes a hazard in the remitting of proceeds. They assume a hazard as to [fol. 802] the solvency of the institution which they select as a depository for the proceeds. They assume a hazard of the solvency of the agents selected for transmitting the money to the shipper. When they send their own check direct they only assume the responsibility of the depository which they select for the deposit of the money. The commission business is a business that is highly competitive, and they always assume a responsibility as to the financial conditions of such principal for whom they are buying livestock. Also, a commission firm which buys livestock on order pays for the livestock and procures the check of the principal drawn on a bank in another city. The check is canceled and charged to the account of the drawee, and the draft of the bank upon which the check is drawn is issued upon another bank. The drawee bank may fail before the draft is received and cashed. The banks with whom he has deposited such a check for collection and the Federal Reserve Bank have protected themselves with proper provisions in their contract. There is nobody left to stand such loss but the commission merchant. I believe that change in the Federal Reserve contract was made after the decision of the United States Supreme Court in the case of Mulloy Brothers vs. the Federal Reserve Bank of Richmond.

Another hazard to which commission firms have been subjected in the last two or three years is the solvency of purchasing agencies on the markets. If they sold livestock to an agency which was insolvent they would be responsible [fol. 803] to the principal for the value. Then, in my experience I have had claims made against livestock commission merchants on account of livestock which they had purchased being defective or diseased. It is a hazard that a livestock commission merchant assumes in the handling of livestock, if that livestock is injured, lost, or stolen. My attention has been directed to a hazard which arose at the Kansas City market in the case of an agency which sold livestock which was defective as to the quality or condition of its health. That case is reported in 160 Missouri Appeals, page 314. I do not know of any other case such as

that, but I have not gone into the law of the states upon the subject.

The Hartford Fire Insurance Company is the only company which I represent that is insuring this hazard. The other insurance companies have plain insurance litigation. They do business in the eastern part of the country as well as the western part of the country. I do not think they write this coverage in the east because there is no demand for it. In the eastern section of the country this hazard is less than it is in the western sections of the country. The hazard that I described is the liability of the commission firm as a bailee for injury or loss of the property as an insurable hazard. Insurance companies will write that hazard, but as far as I know they are not writing the other hazards that I enumerated. There is no form of credit insurance written that I ever heard of or had knowledge of covering the credit on the purchase of [fol. 804] livestock. The only kind of credit insurance that I know of is written where some company will write a policy to an assured, insuring him against loss from trading with certain individuals. I think a reserve should be made to provide for the hazards which I have designated as non insurable. The past experience of a commission firm could not be taken as a criterion to determine what that reserve should be. A commission firm might do business for ten years or twenty years and never be subjected to any loss, and it might do business for twenty days and be subjected to an awful loss.

The best example I can give you of that is the Kent Commission Co. of St. Joseph, Missouri, which I discussed previously.

I have represented John Clay & Co. in legal matters and am acquainted with all of the partners who constitute that firm except Mr. Smith at Denver. I consider them leaders in their profession. I would consider them of very great value in the supervision and management of their business as conducted by them at Kansas City.

Cross-examination:

I do not know what the losses of the market agencies at the Kansas City market have been, during my acquaintance with the market on account of the hazards which I have enumerated.

I have never had any actuarial experience. I don't know anything about how rates on insurance policies are [fol. 805] made up, except I know they are made up by people that are experienced in the hazard. This rate here was a rate that was arbitrarily taken and increased once a few years ago. I take it that Mr. West formulated this mortgage and theft policy, although I don't know. I don't think he based the premium on experience. I think he experimented on it.

I don't know on what basis actuaries usually determine the premium to be charged on an insurance policy or a bond. I know that from the premium must come the revenues from which to pay losses and expenses. Insurance is the law of averages. These hazards might happen to one firm on the market and not happ-n to any other firm on that market.

The hazards which I have mentioned are not peculiar to the market as a whole or peculiar to any market. They are inherent hazards of the business. Some of these hazards have been accentuated in the last three or four years. None of them have been diminished that I know of. The hazards which I have told you about are hazards that could exist any day, any time, any place, under any conditions. It would be hard for me to tell you just what parts I did not draft because before I handled the legal affairs for the Hartford Fire Insurance Co. they already had prepared and issued a policy. Since that time it has been changed and different provisions inserted. It would be impossible for me to tell you what provisions I prepared or remodeled in that policy. I do remember I inserted the 8th clause there on their advice. I drafted the clause lim- [fol. 806] iting the coverage to the amount of the proceeds for the particular livestock sold, or the cost of the livestock. I drafted the provision in regard to claims and the procedure in case of suits and things like that. As to the extent to which I have represented livestock commission firms in law suits where the Hartford Company is not involved, I have represented quite a good many matters for John Clay in connection with the livestock commission business. I have represented quite a few other commission firms. I am on no general retainer by any commission firm at Kansas City or Chicago. In connection with the case which I mentioned of S. A. Delair of Coldwater, Kansas, in

which I represented the insurance company in connection with the mortgage and theft policy, the Kent Commission Company won every law suit. The commission company made several compromises but I don't know the amount. The expense amounted to $20,000 in connection with the taking of depositions, attorney fees, printing records, etc. I don't remember whether the case involved the Farmers Union at Wichita or Kansas City. Suit was brought at Kansas City and settlement made there sometime during the year 1929. It is true that each law suit must be determined upon the peculiar facts of the particular case.

The case of Dale v. Pierson was decided in the light of its own facts, but at any rate a dangerous principle of law was announced. I do not mean to say that people in the east are any more honest than people in the west, but it [fol. 807] would be hard to commit the same theft in the east without the thief being caught. The financial security is safer in the east than it is in the west. I don't know how many mortgages and theft policies the Hartford has on the Kansas City market.

I do know that the partners of John Clay & Company at Chicago maintain a general supervision over all their houses and over all their places of business. They don't sell any livestock themselves on the Kansas City market. The name of John Clay and Mr. Conners and Mr. Wilson are a great asset to any house. It is a reputation that has been built up for honesty and efficiency for several years. I don't think they would stay in business if they were not honest.

Redirect examination:

In case of a loss to commission agencies in which their interests are not insured in a mortgage and theft policy, and those agencies are represented by other counsel, I try to be of assistance to them. In connection with the policy of the Minneapolis National Bank and the failure of certain proceeds in the course of remittances from Kansas City agencies to mortgages upon cattle, I have followed that policy and my company has borne the major part of the expense.

Recross-examination:

I do not recall how many cases arose under our mortgage and theft policies at the Kansas City market during the

year 1929. I know one case that was disposed of in 1929 [fol. 808] that involved the suit of the Federal Intermediate Credit Bank at Spokane, Washington, against the Leitch Sheep Commission Company, involving $20,000. I don't know whether the sheep were sold in 1929 or 1928. Of course there have been a number of little theft claims coming up during the last two or three years since they have been marketing livestock by truck. I cannot pretend to remember them all. Some of these claims are settled out of court and others are not. The Hartford Still writes the mortgage and theft policies.

Redirect examination:

I recommended to the Hartford Fire Insurance Company that it either cease writing the mortgage and theft policy or increase their premiums substantially to build up a reserve to meet losses.

Recross-examination:

I am not responsible for the establishment of the reserves and am not consulted with respect to the establishment of the reserves except more than that they talk to me about the hazards or danger of loss and my opinion with reference thereto. I know nothing about their premium income or anything with reference to that. I am basing my recommendation upon the hazards to which they are subjecting themselves, and especially upon actual experience with two of these failures.

Whereupon the witness was excused.

J. WILLIARD OLANDER, a witness called by the Respond- [fol. 809] ents, after being duly sworn testified as follows:

I am a butcher salesman for the National Livestock Commission Company of Kansas City, Mo. I have been a butcher salesman since December, 1925. I am a partner in the business of that company. I have been connected with the livestock industry all of my life. I started to do yard work when I was fourteen years of age. I completed my high school education and attended the University of Kansas from 1914 to 1917. I became a regular employee at the

yards when I was mustered out of the Army at the termination of the World War. I worked at the yards during vacation periods while I was in school. My first job at the Kansas City Stockyards was as a train runner. I served as train runner in 1919 for approximately one month. I had done quite a bit of that at odd times previous to 1917. I was then put over in the alley as yardman at which I worked for approximately three or four months. I was then given the opportunity to sell calves and I worked at that job until about 1924, then I was put in charge of the butcher cattle department. By butcher cattle I mean the female cattle, the light weight yearlings, the bulls and heifers. I became part owner of the business in 1924. When I started to work down there regularly in 1919 it was my hope and ambition that I would be taken into the firm as a part owner and there was nothing that I could think of that I would leave undone to advance myself in efficiency in that business. In my particular department it is up to me as an owner to see that all details of that service are [fol. 810] of the kind that would be pleasing to any person who would consign their stock to us and it makes no difference to me at what hour I can render a little helpful information to any man in the country or that I can help in the selling of his stock at a considerable extra effort to me. I think that my place in that firm calls upon me to do that.

There are separate alleys and separate pens assigned to the yarding of butcher cattle. On the average day of the forepart of the week I get up around 6 o'clock in the morning have my breakfast and go down to the yards. I change my clothes and go over to the building and look up the number of cattle that are on the yards. I study over the receipts at the different markets before I go out to the alley and when I get out there the man who is helping me in the butcher department has been sorting for a little while. If there is a large supply of new arrivals of car lot shipments in the alley I will talk that over with one man and start sorting and classifying in the same general way. I must look those over that have been sorted for what I like to term the "eye appeal." I want all the cattle that I am sorting to show for that day to have the most attractive appearance possible to the trained buyers. I keep in mind all the time that the water troughs where these cattle are watered must be kept clean. I must watch and see that the

troughs in which they are fed hay are all kept full and oftentimes the hay is rather packed together and must be torn apart by hand. If the boys are busy I will do that myself. Often about that time I receive long distance telephone calls [fol. 811] from our patrons out in the country wanting to know about their shipments and what the condition of the market is. Maybe I will get a call from someone asking whether I think it will be all right to have some cattle there for the next day. About 9 o'clock the buyers of the different packers start out and if they have mean orders they want to look over the entire yards before they start buying. At other times they have orders and I want to have my cattle right to show on the first round. If they bid pretty mean I don't stay with them very long but get rid of them as nicely as I can. If there are any other cattle in other alleys that are moving to the scale pretty freely that may signify that there is action on the part of some other buyer I want to go there and get hold of him. We go on with this operation until our cattle are sold or until the day's trade is about consummated. If any cattle are held over they must be bedded down and if the yards are muddy the pens must be cleaned and bedded. The water must be taken off and new feed provided. Oftentimes our pens are muddy and during the middle of the morning on a dull market day we will take those cattle out in the alley and clean the pens right then. This procedure will go on until around 2 o'clock at which time we should have an extra good idea of the way the day's trade has been. At that time I generally take twenty or thirty minutes off for lunch and then go back and finish up the day's trade.

The man who works with me in the alley assists me in [fol. 812] the selling of stock cows and stock heifers if he has no cattle to buy on that day's trade. After some of the first cattle are moved to the scales the boys bring the tickets back. It is my duty to mark these tickets and see that they are sent to the building or to the office just as soon as possible so that the record, if it is a straight carload of cattle, may be made up by the boys in the office. As a day's trading develops there are the jackpots of cattle to be gotten out. I must keep in mind all the time the different cattle or the different people to whom I sell cattle. I give them to the jackpot man. When the tickets are brought back I must mentally compare the written or stamped weight of

the ticket with the weight I have in my mind to be sure that there is no large discrepancy in the weights. After the trading is done I go to the office and if there are some of the customers there they want information with regard to the market and how their cattle sold. I write a letter to the men who have not been able to come to the market with their shipments. I generally write on the drive-in cattle and they must be mailed out. After I get all that done it is generally about supper time.

Our heaviest runs of butcher cattle occur in the fall of the year. At those times I have had to work after supper. On Friday it does not take as long as it does the forepart of the week to clean up the cattle that I have to sell.

For a number of years I have nearly always gone out to our farm on Saturday where we are feeding some cattle. [fol. 813] I have often found by sorting and separating and working around until I find the class of cattle that are really suitable and the class which looks good to the buyer that we can work better prices out of them than we could have by leaving them together. On one occasion I was offered $9.50 straight for a load of calves and the owner told me to go ahead and sell them. I knew one packer buyer who had an order and I took him down there, sorted off the light weight shipping calves and sold them to him for $12.25. I knew another buyer who had an order for baby beef calves and I sold him 10 or 12 calves for $12.50. I sold the medium weight calves at $11.50 to a shipper. A few steer calves were left in the load which went back to the country at around $10.50. The other day I sold a bull at $5.50 and if I had sold him to the first buyer I would have taken $4.75. He had to be moved by our men from the drive in gates at the north end of the yards up to our gate before we sold him. We sold him and sent the proceeds up to the bank in the country and sent the account sale in a separate letter. This was all done for 75 cents.

I would not say that expedition in making sales is always a test of efficiency on the part of the salesman. One day this week I sold heifers from 3¼ cents a pound up to 9½ cents a pound, cows from 2½ cents a pound up to 7½ cents a pound and bulls from 3 cents a pound up to 5.50. I do not always sell all the cattle the first day they are in the yards. Sometimes cattle are forwarded to other markets after I have shown them. We don't get anything for [fol. 814] the cattle that are not sold but are forwarded.

Cross-examination:

Before I became an owner I was a paid employee of the firm. I received a regular salary. I sell the great bulk of the butcher class of livestock for my firm. My appraisal work is not necessarily connected solely with the butcher trade of our firm. I might be invited out to look at a string of stocker cattle or stocker steers that come in a different department, or on an appraisal trip I might be invited to look at some steers.

Redirect examination:

There does not seem to be very many new ones going to work at the yards. It is my understanding that the average age of members of the Exchange is around 52 or 53 years.

Whereupon witness was excused.

Fred Olander, a witness who had previously testified was returned to the stand and testified as follows:

This letter from the Hartford Fire Insurance Company, which has been marked for identification Respondents' Exhibit No. 31, is a letter addressed to me as chairman of the rate committee, which is in answer to a letter to the Hartford Company in regard to the items mentioned in Respondents' Exhibit No. 25. The separately numbered paragraphs have reference to the paragraphs bearing the same number in Respondents' Exhibit No. 25.

(Whereupon, Respondents' Exhibit No. 31 was received in evidence, and the witness was excused.)

[fol. 815] Mr. Charles N. Bird, a witness called by the Respondents, after being duly sworn, testified as follows:

I buy cattle on order at the Kansas City Stockyards, and have been connected with the livestock industry about 45 or 46 years. I began on a farm in Illinois with my father. Later, I went with a commission firm at the National Stockyards, and about fifteen months later I began buying cat-

tle for Morris and Company. I was cattle buyer for Morris and Company about 28 years. For all that time, with the exception of perhaps two and a half years I was head cattle buyer at several markets. Those markets were St. Louis, Chicago, St. Joe, and Kansas City. I was head buyer at Kansas City about 19 years. I came here when the plant was opened and continued until approximately the time when the plant was absorbed by Armour and Company. During this period of time there have been a great many changes in the result of buying. We buy grades instead of just fixing an amount in our minds, as we used to. They have different sorts now that they didn't have at one time. Now I suppose there are three times or maybe four times the different grades of beef that there were then, not different grades, of beef, but they make that difference in the grading of them. I think it is the idea of most of the commission men, especially those that are best posted, to shape their cattle in a way that they will fill some specific order, or will go in a class. They will sort out a bunch of choice westerns and a few good natives, some medium [fol. 816] western, and possibly take out a cutter or two, and maybe a stag out of a load, and sell them on their merits. In that way they would get a better price. I think it is very necessary to sort to grade in order to get the best price advantage. There has been quite a marked change in this direction in the last four or five years. Fifteen years ago, when we were buying for Morris, we would buy cattle in strings, when we thought the price was right, irrespective of the grade if they were slaughter cattle. They came in strings then more than they do now. A great many cattle came in trainloads, and often we would buy two or three trains of those cattle in a day. I would say there is a greater range in the variety of cattle as to grade classification and killing value coming to the Kansas City market than ever before. It is becoming greater each year. The price spread between the lower and better grades has been increasing. When I first became head buyer for Morris and Company here, extreme range was from $1.85 per hundred weight to $4.00 per hundred weight. I have observed a tendency all through the years for that spread to increase. That increases the responsibility for the work of the order buyers. There is no sign or mark on an animal by which you can judge its value. We have to abide

by the comparison as to the percentage of dressing and the quality of the animal. It is very difficult to do that with this wide variety of slaughter cattle. A person has to know his business pretty well in order to sell his cattle properly, and to buy them either. There is no mechanical device that can be used to register value or grade. I think [fol. 817] it is very necessary for a good cattle salesman on the Kansas City market to be born with an aptness for cattle and a liking for them. Experience is very necessary, and he must be a natural trader. He must be able to judge weight, quality, and breeding. The performance of the work of salesman and buyers requires initiative. When I was cattle buyer for Morris and Company, I received reports from other markets, and I would get the report from each buyer at each different plant. We would often buy three or four times as many as we had orders for, and sometimes only half as many. The beef department in those days did not exercise as rigid a control over the cattle buyers on the market as it does today. A great variety of methods of feeding livestock increases the responsibility of the buyer and seller in handling livestock. I think Kansas City has by far the greatest variety. I have observed instances where salesmen, by their competence and ability in selling, have, in my judgment, secured prices of such a nature that the increased price received, due to competency, more than offset the commissions paid.

I have bought and fed cattle. I have handled them out on the farm, fed them there, and shipped quite a little. Practically all of them were sold on the public market. In selecting a commission firm you would want a person that was popular with the buyers; a man that has a way of handling his men so that they would give him all that they could for their cattle. You have got to have a man that you have confidence in, a man who knows weights, values, [fol. 818] and how to sort and fit cattle for show. The more efficient the selling organization is on the public markets, the better off the producer will be. I wouldn't be in the commission business if you would give them all to me. There is too much effort and money, both, spent in the commission business. When I was in the commission business I had to go to the country on Thursdays when I was just about worn out. I would drive in a car about as fast as I could from one place to another, looking at cattle.

Then I would hurry home, get a little sleep, and go back to the yards on Monday morning. It was positively too much of a dog's life. If you have a great deal of order buying business, and do it satisfactorily it is hard. Where you can buy stuff which is shaped up for you, and your orders are pretty loose, I suppose it will be fairly easy compared with the selling of cattle. I have to draw upon my store of experience and knowledge of the business, and then I find some dissatisfaction. I really like the buying end of it. The selling end is harder for me.

I consider the Livestock Exchange very essential. It governs, to a great extent, the morals of the people, incites them to greater activity and integrity. They stand for clean trading, and protect the seller that is shipping his cattle to the Exchange, and he is sure of getting his money when he does make a shipment. They also stand for a good many of the rights of the farmer and see that they are [fol. 819] protected. They see that the unmerchantable cattle are sold on their merits. I have seen a greater development of character, intelligence, and competition. It is only because they are really and truly masters of the art that they remain in it. I am not a member of the exchange. I am interested in a ranch which is leased. I expect to go out on it in August. I would be very much disappointed if the Exchange did not continue.

Cross-examination:

I have been on the Kansas City market altogether 26 years, with the exception of about a year either at home or down at St. Joe. I started in the commission business as a partner with Ralph Wright and John N. Nichols. I was in that business two years. They are still in the business. When I left that firm I bought an interest in the Crider Commission Company. I didn't like the commission business, and I went in with Charley Crider merely because he was sick at the time. I think there would be something like 20 or 40 different grades of cattle. The packers adopted this practice of grading within the last five or six years. The reason for the increase in the spread in the price of the best and poorest grades of cattle is the fact that they get a greater percentage of good, choice meats over what it was in just a medium animal. The reason

this difference has increased the responsibilities of the salesman is because two steers may look equally as fat, and have the same breeding, and maybe bear the same brand. One fellow feeds them alfalfa and corn, and the [fol. 820] other feeds cottonseed meal and hulls, and possibly a molasses feed with a percentage of corn. The two animals will weigh practically the same, and will have made practically the same gain, and yet you will find out that one would not grade anywhere near where the other one would. The only way a man can tell that is in coming in contact with these cattle and getting to a place where he can almost diagnose them like a doctor would.

I shipped to several different commission firms because I figured that they all had about the same ability and I just want to be friendly toward all of them and divide the business up. I shipped to people that I knew and people who I thought could handle the stuff to a pretty good advantage. I do not regard all commission firms of equal ability on the market. That is determined by the manner in which they trade, the way they shape their cattle, the way they look after them, the way they water them, and the way they price them. I think one would always rather trade with a person that is smart and really knows than to trade with one that does not know and is guessing and trying to feel out the market. You feel like bidding a man that prices cattle close because he realizes that you are a help to the market and that you want to buy your stuff in line in order to retain your business. The man who feels the market out and asks considerably more than the market will stand is not as efficient a salesman as the man who senses the market. He does not trust himself. In the first place I think knowledge gives him confidence. It is like anything else, if a man likes it he will do better in it. The [fol. 821] fact that one salesman may have a car or two a week and another salesman may have considerably more than that does not make any difference in respect to a salesman's efficiency. If the fellow that has one or two loads of cattle would do his duty by himself and his patron, he would have the benefit of anything that the fellow in the active game would do. The volume that the salesman handles would enter into his efficiency. A person could have too many and could not handle them properly. It would take too much time to show them.

Little novelties and things like that has not a thing on earth to do with determining where the shipper is going to send his livestock. The shipper is looking mainly for service and he will ship to the man who can get him the market for his cattle. I cannot see how a man can do anything crooked in the stockyards under the system they now have and get away with it. The Exchange makes it practically impossible to do it.

Redirect examination:

While I was heard buyer for Morris & Co. I got a bonus and a direct salary of $1,000 a month. I was also given interests in their different organizations, banks and loan companies. I was also given privileges of vacation, with expenses. I received quite a few cash bonuses. I think there may have been a few tnat made as much as I did at different times, but I think there were very few, if any. The grading by packers has increased the work for the salesmen, but I think it is a benefit to the buyer.

[fol. 822] Competition is rather keen down there among buyers and sellers. This results in the demand for a higher quality of salesmanship and buying ability. Up to a certain point this increased competition results in a better price to the owner or shipper. When I referred to novelties I did not mean at all that it was not necessary for the firm to advertise, but I think about the best results that a fellow gets from advertising is in his salesmanship down there and with the general morale of his office, from the yardman to the owner. I don't believe that advertising would be beneficial to them. I think it must be contact more. The salesman who has appraised cattle and is familiar with them and the way they have been fed, in a certain degree has an advantage over the buyer.

I consider it a worth while undertaking for the Exchange and the Stockyards Company to employ a man jointly and interest eastern buyers in making purchases of livestock on the market. In my judgment, the problems that confront the livestock salesman are not similar to those that confront the ordinary salesman of merchandise which has a fixed price at which it must be sold.

Cross-examination:

When I was head buyer for Morris & Co. I worked direct with Mr. L. H. Heymann, who is the beef man in

charge of all the sales and all the buying of cattle, hogs and sheep and the selling of all products, with the exception of the hides, fertilizers and tankage. The buyers at Okla- [fol. 823] homa City, St. Joseph and Omaha worked under my directions.

The commission firms down at the market are anxious to give the most service that they possibly can to their customers and all take a pride in giving just a little more service than the other fellow, if they can find the way to do it.

Whereupon the witness was excused.

HARRY KENNALEY, a witness called by the Respondents, after being duly sworn, testified as follows:

I have been engaged in the livestock commission business for eleven years. I have been in the stockyards 24 years. Before I went into the livestock commission business I worked for Armour & Co. The last seven years I was with Armour & Co. I was a hog buyer at Kansas City. I was the second hog buyer. I bought hogs on the Kansas City market and I used to help out at the Fowler yards when the buyers would be on their vacation or sick, I used to go to the Fowler yards every day and sort their hogs for them. When hogs were unloaded from cars or wagons at the Mistletoe yards, all stock would be weighed out of the cars and put in different pens and sorted. Then they would be reweighed and the difference in shrink would be divided among the buyer and seller. They had different arrangements with some of the shippers, the same did not apply to all. Shippers from certain localities would receive handling of their hogs to feed different from other shippers, and the prices they would pay for them would be [fol. 824] on a different basis. The handling of hogs at the Fowler yards is quite a bit different than it was when I was in their employ, and now they receive a fair percent of their hogs by motor truck, and they are handled practically the same way.

When I left the employ of Armour & Co. I went into the commission business. I did it with the intent to go for the kind of business that the other commission firms at that time paid no attention to whatever. As a hog buyer I found out that the salesmen don't make any attempt to get

the prices on truck in livestock. We advertised and called ourselves a drive in firm. We have ranked first in that business in the eleven years I have been in the business. We have handled very few cattle. Since March 1st we quit handling cattle entirely, but we got back in the cattle business on the first of September. We found that we could not handle one without the other. We never could make any money out of the cattle business. I sell the hogs and have a couple of salesmen under me. I supervise all the selling of hogs and sorting, handling, weighing and feeding.

We handle truck in consignments a little different than the majority of the firms in Kansas City for the reason that we have been in the business from its very infancy and our yardmen and salesmen do the office work. My sister is the only employee in my office. A few months out of the year we have an extra stenographer. The salesmen and yardmen make up the account sales, and one yardman is our [fol. 825] bookkeeper. They all get down in the morning at 6:30, and when the selling and yard work are done they come up to the office and do the office work. We work on an average throughout the year of three nights a week, and at this time of the year five nights a week until 7 o'clock. We work lots of nights until midnight.

Our audit on Government Exhibit 14-51, which is the audit of my firm, contains an item of $1,152.96 for meals. Ninety per cent of those meals are for working at night. We pay for their dinners at the yards. Part of that expense is for meals that we send down to the yards. They work right through the noon hour and they eat as they are working. Through the year I myself work six nights a week because when I am not selling and handling livestock in the yards I am out in the country consulting and advising with the people. I spend from 12 to 14 days of each month on the road, besides working every day. We drive out within a radius of 150 miles. My sister works longer than the rest of the employees with the exception of myself. She works 4 or 5 hours on Sunday. I work six Sundays out of seven the year around. I am on the road practically every Sunday. Tomorrow I am going to Gardner and Edgerton, Kansas, to appraise a loan for a man that could not borrow money at his own bank in the country. I nego-

tiated these loans and endorsed the paper for some of them. Ninety-five percent I think I do not endorse the paper. I receive no profit in getting these loans. I do it to help him make a profit and also in order to get his commission when [fol. 826] they come to market. Lots of times they do not even come to Kansas City. Our business has been gradually increasing every year. Owing to the length of times we have been developing the business and the knowledge we have of it, we have an advantage over other firms. I have had the experience of receiving so many hogs in the past three months that I did not give a good many of them the right kind of selling, feeding or handling of them.

Whereupon the witness was temporarily excused.

M. L. McClure, a witness called by the Respondents, after being duly sworn testified as follows:

I live in Kansas City and I am a director, chairman, and Federal Reserve agent of the Federal Reserve Bank of Kansas City. I was manager of a large commission house at Kansas City from 1899 to 1920. I am a member of the Kansas City Livestock Exchange. The company that I was interested in has gone out of business and a new company took over that business. I was manager of the Drumm Commission Company. I have been connected with the livestock industry since 1883. I have been interested in the production of livestock and I own a one eighth interest in the Double Circle Cattle Company that raised cattle in Arizona, a corporation that we sold out in 1928 for $750,000. I am now interested in a ranch in Kansas and am handling about 500 head of cattle. I was a Kansas City [fol. 827] director of the War Finance Corporation. My connection had principally to do with the granting of credit upon livestock and the handling of the paper. I was president of the Stock Growers Finance Corporation, which was the name under which the bankers' fifty million dollar pool operated. I managed it commencing in 1921, and it was liquidated last year. I now have an interest in the Drumm-Standish Commission Company. As manager of the Drumm Commission Company I knew practically all the other commission men at the Kansas City stockyards. I think that sound executive management in connection

with the operation of a commission business at the Kansas City stockyards is absolutely necessary. I do not know a business anywhere that needs good, strong executive officers as the commission company. I think the Exchange organization is absolutely necessary and has accomplished a great deal of good.

In conjunction with Mr. Sherman P. Houston of Malta Bend, Mo., Mr. Lyle A. Stephenson of Kansas City, Mo., Mr. John W. Hudelson of Pomona, Kans., John P. Swift of Kansas City, and Norris Broaddus of Kansas City I made an appraisal, or we expressed our opinions jointly as to the fair cash value for the year 1929 of the service rendered by certain owners of commission business at Kansas City, in the light of establishing what, in our judgment, would be a reasonable compensation for the personal service, time, and effort devoted to the business in that year. The men named have been familiar with the business and are acquainted with many of the gentlemen, the fair value of [fol. 828] whose personal activity and service we appraised. Mr. Houston is a prominent livestock feeder and dealer at Malta Bend, Mo., and is connected with a bank there. He has been a very active feeder for many years and has taken a general interest in the livestock industry and the marketing of livestock. He gets his supply of feeders mostly here at Kansas City market.

I am familiar with the work that commission men do at a market such as Kansas City. Our appraisal was based on the services that they were rendering. We did not consider any investment, although the reliability of the individual entered into it and his responsibility. Respondents' Exhibit 32, which has been marked for identification, contains certain information which we had before us. This information covered the time which each individual had devoted to the livestock industry and to the commission business, the nature of his duties and the gross sales value of the livestock which his organization handled. I marked each of these sheets with my initials, except one, in regard to the John Clay statement. At the bottom of the page I wrote in the figures representing the fair cash value of the services of the individual appraised. That amount was representative, in the judgment of all the members of the committee, of the fair cash value of the services of this individual to the business with which he was associated.

We spent practically the whole day there and it would have taken a long time for all of us to have signed it, so we [fol. 829] asked that a paper be prepared covering the situation. That paper is the certificate that appears at the opening of this exhibit.

During the time I was engaged in the management of the commission business at the Kansas City stockyards, I performed duties that had to do with the employment of men to serve that business. On somewhat the same basis I was attempting to arrive at the fair cash value of the services of these individuals to the organizations with which they were connected.

I have been a director of the Federal Reserve Bank at Kansas City since it was organized in 1914. I have been chairman and Federal Reserve agent since May 1, 1923.

The amounts appearing on each sheet under the heading "Appraisers' Findings" in Respondents' Exhibit No. 32, are representative in each instance of the opinion of this committee as to the fair cash value of the services of the individual whose name appears on each sheet to the organization with which he is associated. We unanimously agreed on each one of the figures. We did not have the information as to the actual compensation or the return which these individuals received out of the business in 1929. We valued it on what we considered his services worth, not what he was getting. Full discussion was had among the members of the committee.

I am acquainted with Mr. Clay, Mr. Wilson, Mr. Kleman, and Mr. Connor of John Clay & Co. I came in contact with them in competition in business. Mr. Connor was also a [fol. 830] director of the fifteen million dollar pool to relieve livestock credits known as the Stockgrowers Finance Corporation. Those gentlemen are competent and able livestock commission men. The time that they devote to the business would not be the best measure of the value they would be to the company. Their names having been engaged in the livestock business probably fifty years and from their experience in knowing how that business should be carried on would be the best value, and I think each one of the partners would be worth from five to ten thousand dollars to this company here. I think John Clay could leave the business here entirely in his name for any other commission firm it would be worth, without doing anything,

ten or fifteen thousand dollars a year. Assuming that they devote 8% of their time to the business here, their ability in directing the business would be worth that much.

JOHN P. SWIFT, a witness called by the Respondents, after being duly sworn, testified as follows:

I have been engaged in the general insurance business for about five years at Kansas City. Mo. I was engaged in the livestock commission business from 1910 to 1925 at Kansas City. I am at present a member of the Livestock Exchange. I have a stock interest in the business of Swift & Henry Livestock Commission Co. It is a comparatively small interest. Five shares constitutes my holding. There are only one hundred shares. I held a lot of different committee as-
[fol. 831] signments in the livestock Exchange and finally was president. I retired from the commission business and entered the insurance business because I thought I could make more money in the insurance business and not work as hard as I had to in the commission business. (Counsel reads from page 4 of Respondents' Exhibit No. 2 a statement relative to the methods employed by packers in connection with the operation of and acquisition of receipts of livestock at private stockyards.)

I think that is a fair statement of the facts. I agree with the statement contained in the letter of the Secretary of Agriculture appearing on page 7 of this exhibit. These situations had an influence in my decision to retire from the commission business. Diminution through direct buying of the volume of hogs passing through the public market at Kansas City had an effect upon the unit cost of operation of the commission business. It turned the hog department of a lot of commission firms from a profitable money making end of the business into a money losing end of the business. The firms still were forced by reason of competition and by reason of the fact that they had some hogs coming to keep a first class salesman.

When I was in business at the stockyards I was acquainted with the various owners of commission firms. I have heard Mr. McClure testify. I was a member of the group who appraised the services of owners of commission firms for the year 1929. A group of us met early in the morning and we

[fol. 832] had the names of all these people to try and set a fair value on the work of their services. We proceeded to labor there for some 10, 11 or 12 hours. After a discussion of some length we arrived at what we considered a fair value on their services. That report represents the unanimous opinion of the com-ittee. It was arrived at only after a discussion which took a good many things into consideration. The committee collectively had got information regarding practically every individual that had had business dealings on the selling side, or that had been associated in business as competitors with these people. I think the amounts set up as the fair cash value of these gentlemen are exceedingly fair. If anything, they may be a shade low. I agreed on a figure for some of these men which, if I were rating them personally, I would rate a little higher. This is a matter of agreement. It is just like a horse race, everybody had his opinion.

Naturally, we considered the amounts that were received for services rendered in comparable lines of activity. I cannot speak for anyone else, but I would have to compare what a man can do in the insurance business as compared with the livestock business. That naturally was in my mind. I did not take into consideration any return that should be realized from capital invested in the business. This is purely a service rendered proposition. I think I can say that practically no consideration was given to the amounts actually paid to the gentlemen whose services we valued. As far as any discussion with the entire committee or any knowledge as to the salaries, we had none. It seems to me [fol. 833] that one case of that kind did come up for discussion and we decided the fellow was overpaid. It made no difference to us. The only information which we had before us is what appeared on the exhibit. Of course we called to our assistance any outside information which we had through acquaintance and knowledge of the market.

The commission business is a good business but I think the return has shrunk to the point where it is not attractive to men of younger years. If the Packers and Stockyards Administration is to be granted all the other authorities that they now have over commission men, they certainly should have the right to control who shall operate on the market. If a man has been guilty of unfair market practices and then comes along for registration, and I have

to compete with him and I know he is unreliable, I see no reason why the Packers and Stockyards department should let him operate. That is exactly what happened in certain cases of my own knowledge. The open competitive market is the only way you can market livestock. You have a perishable product, and you cannot do it any other way. Anything that interferes with it should be done away with *it*.

I assisted in drafting a bill which was presented to Congress, giving the Secretary of Agriculture the right to refuse packers permits to operate private stockyards adjacent to public markets unless, in the opinion of the Secretary of Agriculture, public convenience and necessity demanded the [fol. 834] operation of those private stockyards. The packers fought that legislation successfully.

Whereupon the witness was temporarily excused.

LYLE A. STEPHENSON, a witness called by the Respondents; after being duly sworn, testified as follows:

I have been engaged in the insurance business for 23½ years. I have knowledge of the business as conducted at the Kansas City stockyards. I used to be a telegraph operator and I worked out at the stockyards. I worked there from 1903 to 1907. I became acquainted with the commission men who were in business there at that time. I have retained those acquaintances and have formed others. While there I became familiar with the method of operation on the market as a whole. I heard Mr. McClure testify this morning. With the other gentlemen named by Mr. McClure, placed my opinion upon the cash value of the services of the various individuals described and named in Respondent's Exhibit No. 32. I appraised these men on the same basis that I would men of like ability in other lines of business. In practically every instance I took into consideration information which the various individuals had about the market and these men as well as the information that appeared in the exhibit. The amounts that are set out there are representative of the cash value to the several organizations of these owners of business are not, in my judgment, [fol. 835] fair and reasonable compensation for their serv-

ices. It is my opinion that they are underpaid upon the basis of the figure which we arrived at. The figures were compromised on agreeably from certain intimate knowledge of the livestock business. They contribute more to build up a stable and economic market for the man who raises the livestock than they receive for the work they do. They are veritable experts and they are in no way adequately compensated. The gross commissions earned during the year 1929 was the only information that we had as to their earnings. I am in accord with Mr. McClure's testimony in connection with the description of the opinion and judgment of the appraisers who valued these services, as expressed in Respondent's Exhibit No. 32.

Whereupon the witness was temporarily excused.

M. L. McClure, a witness previously sworn, resumed the stand and testified as follows:

Respondent's Exhibit No. 33, the same being regulation J of the present regulations of the Federal Reserve Board, was offered and received in evidence.

Under our existing rules relating to check clearing the credit does not pass through our member bank until we actually get the return on the item. It must be in Federal Reserve exchange payable in Kansas City. We publish a schedule giving the length of time it takes to realize on the [fol. 836] various items handled at various points. All items on a Kansas point have a two day deferred payment. On Missouri, it is a two days deferred payment, except Kansas City and St. Louis. I think St. Louis is cleared in one day's time.

Cross-examination:

My present interest in the Drumm-Standish Commission firm is as a stockholder in the amount of a trifle over $20,000, a trifle over $20,000 of the $125,000 capital. I attend their stockholders' meetings, but I am not a director or officer in the company, I don't have anything to do with the hiring of employees in that company.

Personally, I have never bought or sold livestock on a commission basis.

In determining the ability of a man we would soon learn if a man was not giving satisfactory service. By experience we learn whether they were satisfying the shippers. The salaries in stockyards are based just like any other salaries, on the prices paid by others and in other like employment.

By mutual consent of all present I was made chairman of the Committee of Appraisers. I was not given any written instructions or outline. It was around 9 or 10 o'clock in the mornings and we met in the office of the Secretary of the Livestock Exchange. Those sheets were presented to us and we were asked to make an appraisal of what we thought would be a fair valuation of the salaries of those people on the sheets. That work was all done [fol. 837] that day. We had the facts as stated just as they are there on those slips. I do not know who prepared this statement containing certain comments covering two or three pages at the beginning of this appraisal. I haven't a bit of doubt but what they were read over before the Committee acted. I would say that our Committee did not prepare them. I do not know whether our Committee read them over. I think I must have read them over before but I have no recollection of it. I think we handed the results of our deliberations to somebody down there but I do not remember who it was. (Counsel for Respondents makes a statement that the memorandum contained on pages 1, 2 and 3 of Respondent's Exhibit 32 was prepared by John W. Roberts and who read it over to the Committee at the time it was made.)

I do not think that Mr. Roberts read this memorandum to us. The material contained in this memorandum did not in any way effect the deliberations of our Committee. The initials in blue appearing on each one of these sheets are mine. They were made by me. I also put on the figures showing the valuation of the service. I think we necessarily would have to make some comparisons but we arrived at the conclusions entirely separate. In considering what they were valued at we had to consider what such work could be done and we compared the services of the different men so as to give the valuation on their services. We made that comparison by the length of service and the amount of [fol. 838] business done. A cattle salesman, if he is a good one, will improve every day that he is on the yards. The

longer he is in the service the more we would allow him up to a certain extent until we would find that we could not pay that much and could not increase his pay. After a man became perfect in it he might not earn any more money than the man that was still struggling along trying to get perfect. I don't know at what point he would reach perfection. That question did not enter into our discussion. We knew that some were in the service longer than others and were more experienced and for that reason would be better salesmen. I do not think we decided up to what period of service we would give weight to that factor. The comparisons among these people were only one of the few things that we did. We used our best judgment, our best experience, our knowledge and acquaintance with the men. We were not trying to boost salaries or reduce them. The volume that one firm handled compared to the volume of another firm would enter into a part of it. The men that did not sell as many cattle would not have as much to do as the other men. We had before us the number of livestock handled by the firm but not the number of livestock handled by each individual. We did not have in written form the information as — the organization of the firm and the personnel employed. We knew by experience how much probably the head salesman would make and what other parties he had. We could guess pretty closely at the number of salesmen they had on an employed basis. We did not know what they paid those men. The Committee did not have *nay* more definite information than what I have already stated. I want to say that this Committee was not solicited to make any valuation on any man's services and they did not go at it in a surreptitious way or any other way. We, as business men, met there and did the very best we knew how in fixing those valuations. We knew the man's duties and we made an attempt to fix the valuation on them without any solicitation or advice from anybody. A comparison of the volume handled was only one of the things we used. We used the length of time they had been in service, their ability, and our knowledge of the man. If the volume in one case was greater than another that would not necessarily tend to increase the allowance we would make in that particular case. We considered all things attached to the fixing of the valuation of an individual service. One man might be a better judge of livestock. We considered

our own personal knowledge about those matters. The nature of that personal knowledge was acquaintanceship. Each member of this Committee is not personally acquainted with each person whose services have been appraised. One or more of them might have been acquainted with them.

In comparing the Fred O. Morgan Sheep Commission Company, a partnership, and William Leitch Sheep Commission Company, a partnership one had $2,191,000 of busi- [fol. 839] ness and the other $1,100,000 of business, in the one we gave two salesmen $10,000 and in the other we gave them $6,400. If we had judged entirely on values we would have doubled the allowances. We took the same grounds as you would in employing a grocery clerk. Value was a part of the consideration in this particular case. From looking at those reports I could not tell what other factors were given weight and to what extent we gave them weight. We never could tell what percentage we gave each of those reasons. It would be impossible to tell that. I don't think any commission man could do that.

I am personally acquainted with some of these four men but as to which ones I refuse to answer. (Counsel for Respondents makes objection to the line of cross examination on the ground, among others, that it is embarrassing to the witness to be called upon to discuss his personal acquaintances.) I have no objection to telling the people that I know down there. (The witness then proceeds to call off the names with whom he is acquainted and the length of time during which he has known each.)

In the case of the firm of Wester Brothers and Smith Commission Company I think R. W. Wester is the only one I know in that firm. I know a good many by reputation, etc. In fixing the fair cash value of the services of Dan Wester at $3,500, J. P. Smith at $5,000, and R. W. Wester at $4,000 we took into consideration that Dan Wester [fol. 840] was in the business as a steer salesman for 11 years, J. P. Smith was a cattle salesman for 34 years and R. W. Wester was a salesman and order buyer selling hogs for 25 years. We gave weight to the experience we thought each had in the livestock industry. We gave consideration to all those things.

I cannot give any more information than there is in my general answer that I have considered those three factors

and I do not know just what weight I have given to anyone of the three. As to which was most important in arriving at our conclusions, I cannot answer for the rest of the Committee, but I think I would consider the general character and the experience and success of the party referred to.

I have known Mr. Elliott of the Elliott Swain Commission Company for 32 years. I don't think I have known Mr. Swain so long. The length of time that I have known these men was a factor in arriving at my conclusion whereby one got $4,000 and the other got $5,000. The time that they were employed entered into it. Mr. Elliott has been down there 35 years and Mr. Swain around 28 years. I do not know whether Mr. Swain was always employed as a salesman but I do know that Ed Elliott has been all those years employed in the yards. That is only one of the things I would value his services for a thousand dollars more than Mr. Swain. In referring to the success of the individual, I had in mind their general reputation as commission man. Mr. Examiner, I have recommended hundreds of people for [fol. 841] places in positions and I have hired hundreds and I have never had occasion as a business man to analyze my thoughts and ideas as this examiner is requiring me to do now. If I am not competent as a business man as a whole for what I have said, I do not object to his attacking my ability or my experience, but I do object to having my mind torn up and put in pieces in analyzing my personal friends and all that. I do not believe the Secretary of Agriculture requires any such information as that.

That answer goes to all of those questions because I cannot expand on anyone of them. There is another thing that we did take into consideration always, what such men were able to obtain in like kind of employment. Such experience has a value in it, too. The only information of that character which we have before us was our own personal knowledge of it. We have 360 employees up in the bank and I have had 125 or 130 employees at the stockyards. I have been in that business all my life and I have a reason to know how much every employee gets and whether they are capable or not. I can check it up on them while I cannot maybe on the professional man. I have been in the commission business or was in the commission business for at least 25 or 26 years and why

wouldn't I know the salaries that were being commanded in the livestock commission business. I did not pitch those values on my knowledge of what is being paid in the banking circles. I gave weight to that only in connection with the men who are employed in the office. I knew what their employment was worth and what wages men are getting [fol. 842] in a good many lines of activity. As to what the total market value of all the sales and purchases has to do with the fair cash value of a man's services, I think a firm would not employ a man who did not earn his salary. The firm would soon go out of business if the value of the services were not equal to the salary. We did not have before us at the time we did this work the expenses of the operation of this business, as to whether these men were being employed on a profitable basis. We knew they were still employed on the kind of wages that men of that character and experience obtain. Every firm employs their men as cheaply as they can so that they get the best service. I do not believe that we had any of these men in to ask them questions.

In the case of Long Perry Commission Company we allowed $4,000 for the fair cash value of the services of Albert E. Long, $6,000 for Robert B. Perry and $4,000 for B. W. Perry. We usel the same formula in that that we did for all others. We took everything into consideration that would bear on the value of his services. I do not know Robert W. Perry or B. W. Perry, I might know Mr. Long. There were a number of other men on that Committee and they may have known him or there might be some other reason; we gave consideration to everything that one could learn and know about them. As to what factors makes the difference between these salaries, I might not be able to tell that but I might do that. As a general thing a hog [fol. 843] salesman does not draw as large wages as a cattle salesman. B. W. Perry is listed there as a cattle salesman and buyer and we have him down at $6,000 and the hog salesman down at $4,000. There is a difference in the time and service. B. W. Perry's experience covers only 16 years and probably less than that in the sales business. Robert B. Perry has been in the commission business 20 years. The difference of 4 years experience is only a part of the consideration.

I do not recall our consideration of Robert H. Stover and

Charles F. Vieregg of the W. M. Leitch Sheep Commission Company. I do not recall the factors which entered into our consideration that made the figures the same for their services. This report represents the unanimous opinion of our Committee. There was not a wide difference of opinion to any great extent. We discussed it around the table and each one stated his opinion and conclusion. There was nobody lead the committee. Each one had his own individual ideas and then we got together just like a jury would. It was my understanding that every member of the Committee was satisfied with the result in each case. I think there were several cases where men that were not known to any member of the Committee. We had other things to take into consideration. I have never been called upon before to fix a value of this kind by a court and I have never testified as to the value of personal services before. In determining the salaries which I will pay the employees [fol. 844] at the bank I give consideration to the amount of work they do, their capacity, what they have been employed for before and for the same things that any business man would employ*ing* an individual. I have a general knowledge of what different lines of banking services and activities are commanding, by way of salary. We started out with the understanding that we would consider each case individually. The value we placed upon their services was for the year 1929. I do not think it would be any different now. We fixed that value from the standpoint of the man himself who was to do the services and the work. I think we figured it was the value of that service that would have to be paid by the firm for like services. When you employ labor you have to go into the market and have to pay what the market value is and we figured that is what it was. I believe where the owner of the commission company has a small business he does the work himself and his expenses are less. He gets all the profits and his salary would be higher in proportion, and ought to be, than a man who was on a regular salary from a corporation or a partnership. That should be considered and that is the way the Committee considered it. We differed to some extent and we argued the question out just like a jury.

Mr. Houston and Mr. Hudelson had more experience from the shipper's side than I had and they could judge of the qualification of a salesman just as good or better than I could. Jack Swift actually had experience in the yards and

[fol. 845] would be a better judge of these matters. It was a composite committee trying to arrive at a just and fair valuation of services. In some cases we knew that the firms were engaged in the loan business and in fixing the value of the services of the manager we made a difference. In the case of F. G. Robinson of the Ryan Robinson Commission Company his duties are not only the management of the business and overseeing what was done in the yards but also making loans. To a certain extent that was a factor in the case of the firm of Swift & Henry. I think we made the valuation of the commission part, and he should be paid in addition a commission for his services to the loan end of it. I don't think there is any way that you can arrive at a determination of the quality of the services rendered by a salesman. It was considered with the other matters. We did not have before us the quantity of services performed by each man. I came down and made this valuation and appraisement to the best of my ability as a business man. I gave my sound business judgment on these matters and to be harassed and continually asked the reason why I don't believe any business man would like to stand for it. The figure which we have set down here I consider to be the earning capacity and their value to the firm which employs them.

In regard to the difference between individual No. 4 of Firm No. 59 and individual No. 8 of Firm No. 63 I think that all courts, and the United States Treasury Depart-
[fol. 846] ment, in accepting the valuation on income tax, permits trademarks and good will to be listed, and in the case referred to, a long time actively engaged in the business, and it is also true of the other case. Their good will, their trade name is worth a large sum of money. I would say that we gave that factor consideration in all cases where we knew that condition existed. In regard to my estimate of the value of the services of John Clay & Company, I based my estimate on what I mentioned just a few minutes ago—the trade mark and the good will of John Clay who has been in business for 50 years. I think I have made it very cheap. I have no knowledge of the time the partners of John Clay & Company actually devoted to the operation of the commission business at Kansas City. They kept very close touch with the matter.

Whereupon the witness was excused.

JOHN P. SWIFT, who had previously testified, resumed the stand and testified as follows:

I came out here in the latter part of 1910. I had been at Cornell four years and then I had a short period in the south with a lumber company. I started in driving hogs from the trains to the hog yards. Later I advanced in the scale of employment and assisted the salesman in the hog yard in selling crips and odds and ends, feeding and watering hogs and sometimes in the office. At times I was used [fol. 847] to straighten out difficulties in the country where loans had gone bad. I traveled for the firm soliciting new business. All through this period I was familiar with the bookkeeping and the accounting and of the office. During the last four or five years of my service at the yards I was quite active in the affairs of the livestock exchange. I never purchased any livestock but I have sold hogs and sheep on stockyards and bought and sold livestock in the country. I have spent a great deal of the firm's money, running into several hundred thousand dollars every fall paying for the country purchases of lambs contracted in the spring for fall delivery. I will say that the duties and the activities of the livestock commission business are comparable to those of an insurance business. All I have got to sell is my personal service. I am paid on a commission basis in the insurance business and my earnings depend solely on the success that I have in writing insurance. The product I sell has got a set price, largely set by State regulations.

Redirect examination:

I will say roughly that the customary compensation for insurance brokers, depending upon the class of business, ranges from 5 to 20%. I think the bulk of the general agents would have a differential of between 5 and 12½% over what is paid to the broker.

If I were going to launch in the commission business tomorrow, there are a great many men down there that we [fol. 848] would be glad to hire at the figures put down. As far as I went personally, and I think the committee generally, there was a lot of things taken into consideration. In the first place, most of the men on that committee had a pretty fair knowledge of the business and of the personalities. As I recall it, there was only one man on that list that I did not know, either personally or have enough

information regarding his business. We talked to Charlie Haren about that man. So we started out with a background of personal knowledge concerning these people. We did not go at this thing like an agricultural stock judging team. We operated like a bunch of cattle men going out into a pasture where they looked the steers over and said that they would give $50 a head for them. I think the judgment of a committee of this kind will come far closer to reaching their actual worth to the community in general for the kind of service they do than any statistical report that you might be able to work out from the figures of the firms by whom they are engaged.

Mr. Houston said he belonged to an organization that had offered my brother more money than we assessed him at. The first thing the committee desired was to be assured by Mr. Gage that the figures we put down would not be made available for inspection by the men involved, because we felt that there were some of them that were going to be pretty insulted at the way we rated them. Others, of [fol. 849] course, would have been flattered. We had a lot of things to be considered. In the first place we took the man's age, his experience, and his ability to go out and get business and to hold it. We considered his personality, whether he would make a good impression or bad impression, whether he was lazy or industrious, the kind of business he was engaged in, whether he had a western business or a well balanced native business, whether he was a buyer or a seller, what he did personally, where he fitted into the scheme of things, and last and not least his reputation and integrity. We were sitting around the table and each member of the committee had a copy of this memorandum appearing in Respondent's Exhibit 32. We had a good deal of discussion about every one of these fellows and people would advance their personal knowledge of each particular individual. We had no instructions and we had no requests other than this memorandum which speaks for itself.

Recross-examination:

In a general way our committee had a knowledge of the extent to which these men whose services we appraised command a following in the country.

Whereupon the witness was excused.

J. W. HUDELSON, a witness called by the Respondents, after being duly sworn, testified as follows:

I live at Pomona, Kansas. My main occupation is farming, and I have been engaged in the livestock business ever [fol. 850] since I was a small lad. One year we handled 14,000 cattle and another year 12,000 cattle. It runs from six to eight or ten thousand cattle a year. The past year we handled about 5,000 cattle. I am interested in two banks. I sell principally all my livestock at Kansas City and St. Joe.

I have patronized the Kansas City market for 40 or 45 years.

I am on the board of directors of the Kansas Livestock Association. I was a member of the committee in determining the fair cash value of the various individuals who own commission firms, as is expressed in Respondent's Exhibit 32. We started about 9 o'clock and got through about half past five that evening. Mr. McClure as chairman went through the volume there, called the names off, and a great many of these people I personally knew. Once in a while I would think it was too low or another member would think it was too high, but we would end up unanimous in our judgment what the amount should be. I was present when Mr. McClure put in the final figures. I recall the memorandum which is contained in the exhibit. There is a relation between a commission man and his customer that does not exist between any other line of men that I am acquainted with. The commission man is a little closer to his customers. He has had customers for 20 or 10 or 5 years. The man that is feeding a couple of loads of cattle out in the country looks forward to coming to Kansas City, and being with this commission man, a man that can hold the business for a term of years, or for a business career, has [fol. 851] a value that is pretty hard to determine. He can go to work for a commission man and carry his trade with him. A man that can do that is worth more than a man that just has not any personality. When I know a man is honest and tells the truth all the time, that is a factor that I put into a man's value. Sometimes an individual will change from one firm to another because he may be offered a lot more money than he was getting. A list of customers is his asset. That determines what he might be worth to a commission firm, in my judgment. I have observed sales-

men operating on these public markets at St. Joe and Kansas City. In order to be a competent salesman he must be a good judge of livestock, and I don't believe salesmen can be made, I think they have got to be born. A salesman has got to be a good trader and be acquainted with buyers. He has to be a reader of human nature. In my personal opinion I take those things into consideration. Once in a while we might be apart $500, but we would discuss the matter and agree. One would put on a little and the other would take off a little.

I would say that the commission business is a highly competitive business. I read Mr. Mercer's testimony and agree with the most of it. I have always contended that there were too many in the business. It is a slight run today, but one-third of the people could do the work, with the exceptions of a few days in the fall of the year when there are heavy runs. I would say half could do the business that is [fol. 852] done at the stockyards here. If there were half the men engaged in the commission business, I think we would have a more stable market, and we could have some control at least over the volume of cattle that would be shipped on the various dates. There should be competition between individual agencies for business because it spurs them on to greater effort and more efficient service.

Cross-examination:

I ship practically all my livestock to one firm at Kansas City. I have shipped to different firms. Of late years I have shipped to John Clay Commission Company.

I have never been engaged in the livestock commission business. I don't have a membership in the Livestock Exchange. In the shipping season I am here at the market pretty near all the time during a few days of the week. I was asked to act on that committee on a Friday before the meeting on Monday by long distance telephone. James Reid of John Clay Commission Company called me up. When I came down here I had no idea what I came for, or what was expected of me. I do not know how many of these men whose services I helped to appraise that I know, off hand. I would say that I know personally the most of them. We have livestock organizations and we have conventions and we meet these men at conventions. I have known most of these men, a great many of these men from

boyhood up. They are most of them younger men than I am. They have grown up under my observation here since I have been coming to this market. When I am down [fol. 853] here at this market I visit around with different people, watch the sales, and go around and see other people's cattle. I have bought quite a good many cattle on the market. I would say that I was guided more by the element of honesty than any other, in my judgment. I probably did not give th s memorandum as much consideration as I should have given it. We did discuss the volume of business that the firm did and the qualifications, the individual work and the present opportunity, and their honesty as we personally knew them.

Redirect examination:

In making up these valuations I had before me all of these individual sheets, 1 to 153, and the information that was on those sheets. I gave attention to that information as well as my personal knowledge.

Whereupon the witness was excused.

Norris Broaddus, a witness called by the Respondents, after being sworn, testified as follows:

I am president of the Stockyards National Bank in Kansas City, Missouri, located across from the Livestock Exchange Building. Our business is largely with the industries located at the yards, particularly the livestock commission men, the traders, cattlemen in the country, and the country banks. I have been connected with that bank 12 years. I went to the yards in 1902 and was yard boy for a commission firm and later I sold cows for them. In 1905 I went with Morris & Co. as a cow buyer and later on as a steer buyer. In this period I became acquainted with a good many of the owners of commission businesses. I have practically grown up with them and I feel that I [fol. 854] know them quite well. With regard to the qualifications essential to competent salesmanship I would put integrity first and closely following that ability and general knowledge of the business. Acquaintanceship with the market and buyers on the market is desirable. A man

must have some natural aptitude for trading, as well as be a good judge of livestock.

I met with the other gentlemen whose signatures appear on the first page of Respondent's Exhibit No. 32. This committee met in a rather informal way and as the different members of the livestock Exchange were mentioned we tried to arrive at a fair valuation, in our opinion, of their services, taking into consideration their integrity, their ability to trade, their general knowledge of the business, and the years they have devoted to it. I think we had the memorandum before us. I feel reasonably sure that I read the memorandum, but could not say under oath that I did I did not know exactly what was expected of the committee prior to our meeting. The figures as to the fair cash value of the services of each individual were arrived at by the opinion of the entire committee. I saw Mr. McClure write those figures on these various sheets. The committee attempted to arrive at the sound business judgment expressive of what this purports to express. We took into consideration what data we had, but we had very little data. We did have the data appearing on these sheets 1 to 153. We had the benefit of personal acquaintanceship [fol. 855] through the various members of the committee with many of the individuals named. There were only two or three names mentioned that I did not know. There was a sheep man that we did not know. One member of the committee called up an outsider to get some information, and that related to this one individual. I believe the amounts set out are representative of the fair cash value of services upon a per annum basis of the individuals listed on these several sheets to the organizations with which they are connected. It is an amount expressive of the best composite judgment of these members whose names are signed to the certificate. I think competition between different selling agencies for business promotes the efficiency of operation. Each of these commission firms is right up on its toes trying to make its sales please its customers, and with the hope of attracting new business. I would say that the services of a competent and efficient salesman of livestock is of value to the man whose livestock they have for sale. I have noticed the widening spread in the value of the different grades of cattle, and I would say it has increased the responsibility of the salesman.

Cross-examination:

I have not been employed by a commission firm since 1905. As vice president of the bank I made part of the loans and tried to obtain any desirable new business possible. I have been president since 1928. I would say around one third of the commission firms located at the [fol. 856] yards handle their business through our bank. I do not hold a membership in the Exchange.

This is the first time I have ever been called upon to place a value upon personal service. When the committee met, it seems to me from memory that Mr. Biggerstaff told us the purpose of the meeting and then left us. A number of the persons whose services we valued have their accounts with our bank. I would say that the information which we had with respect to these accounts in no way assisted in any way in our conclusions. I would say that in a general way we had in mind the principles laid down in the memorandum when we made this appraisal. I would say that the appraisal was merely the committee's opinion or valuation of the party's services figured in respect to integrity, ability to trade, his personality, his years spent in the business, and his knowledge of the business. It happens that I personally had traded with a great many of these men and I naturally remember their manner and ways of selling livestock. That was when I was a steer buyer for Morris and Company.

Redirect examination:

The individuals named in this report who are stockholders in our bank are Henry Elrod, F. L. Merchant, S. G. Smith, C. H. Bates, and F. G. Robinson. They have small holdings and the fact that they owned stock in the bank did not affect my judgment. Friendship did not enter into my judgment of these values. I was trying to be fair.

I quit the commission business because I obtained a better job with Morris and Company. I got more money. I went [fol. 857] in the bank because I thought I could better my personal business position. In passing upon loans or advancements to commission firms, we take into consideration the borrower's integrity and his financial responsibility. In the case of a partnership or an individual we would consider the personal net worth in granting credit, if he

would endorse the paper personally. We would consider net worth by all means in extending credit.

If a purchaser had a cashier's check drawn on some bank at home which he brings with him to pay for livestock and it is deposited with us we would give the firm immediate credit like we do on all their items but it would not have any effect on the float charge. It would take us several days to get the cashier's check into available funds just the same as it would the farmer's check. If the countryman brought Kansas City exchange with him from his home bank, then they would be immediately credited and there would be no float because that would be available. Practically none of the countrymen bring Kansas City exchange with them.

In connection with the operation of the bank, I have had to employ men to carry on the work of the bank. I have considered their ability in connection with the amounts which we paid them.

I would say that there has been a large number of bank failures in Missouri, Iowa, and Illinois in 1930. That has added to the hazards of our business and the commission business.

I would say that the Kansas City Livestock Exchange [fol. 858] was of immense value to the entire livestock industry.

Recross-examination:

I am not in position to state what losses were suffered by commission firms on the Kansas City market during the years 1929 and 1930 as a result of bank failures.

Redirect examination:

In my memory during the 12 years that I have been in the bank I can remember of very few instances where any people from out of town brought Kansas City exchange. I think I would be safe in saying practically none at all. As far as I know it is not a practice to pay in Kansas City exchange or currency. If a rule should be put in force at Kansas City requiring cash payment immediately upon purchase of livestock or Kansas City exchange to the amount of the purchase, such a rule would divert business to other markets such as St. Joe, Omaha, and Wichita.

The market agencies who are depositors in my bank do not keep shippers' proceeds accounts.

Witness Broaddus excused.

LYLE A. STEPHENSON, who previously testified, resumed the stand and testified as follows.

Cross-examination:

I operate a general insurance agency and sell all lines. I have quite an extensive clientele among the commission firms on the Kansas City Market. I write life, automobile, [fol. 859] public liability, employees' liability, and fire insurance for them. The business is written in the office, but I do not personally write the policies.

Except during American Royal preparations, I suppose I go down to the yards once every ninety days. I own a farm but do not raise livestock any more. I am helping to finance one of the feeders at the present time. I do not do a general loan business on livestock. I think the last time I was out in the stockyards observing the purchase and sale of livestock was in November. I think I am able to judge salesman's ability by walking through the yards.

I know a great many of the commission men but I could not tell you the actual number. I know most of them. I have not observed all of them operating out on the market.

I have never made an appraisal of personal service for the purpose of testifying. When making this appraisal I had in mind other lines of service such as general commercial and banking lines. I am a director in the Morris Plan Bank. I had the insurance business in mind. I think of men employed by concerns like steel companies around town and men employed by concerns like mercantile stores, retail mercantile stores, and men doing various lines of manufacturing work. I have seen the payrolls of many of these establishments. Presidents of large concerns reveal to insurance men many of their intimate business secrets. I am familiar with the earnings of many men here in town occupying similar positions to those men at the stockyards. [fol. 860] I compared the position of a man in a steel company with a man engaged in the livestock commission business. In thinking of a man like J. C. Swift, I figure

what men of like ability were receiving in other lines of business. William Allen, President of the Sheffield Steel Corporation, in my opinion is no better man than J. C. Swift and I fancy if you will examine the earnings of Mr. Allen and those of Mr. Swift, there will be a rather wide separation between their earnings or the salary which they draw. Mr. Swift is unquestionably one of the finest protectors of the American farmer that we know of in the United States of America. He has done more work for them. He is a man of wonderful resourcefulness and sincerity of purpose, and he does not receive any money at all like he is entitled to. And there are many more men at the yards just like him. He is sincere and honest, and the interest of the customer comes ahead of any profit that he might hope to make.

The same thing applies to Henry Elrod and many other men at the stockyards. They work their lives out for their customers before they think about the commission they are going to get. And when I referred to the great protectors of the American farmer I was thinking of honesty and ability combined. I don't think Mr. Swift buys or sells livestock, but he might advise the farmer in one sense of the word.

I regard the figures set down in the appraisal as too [fol. 861] low for the ability of the men. They could unquestionably make more money than they are making now in other lines of endeavor where governmental interference does not upset their future. By "governmental interference" I mean constant harassment of the various market agencies by the Government.

One of the principal harassments that I know of at the stockyards is the various requirements of the government in making out reports that according to the opinion of the best economists in the country have no value whatever and cause the livestock men to employ extra help to keep these reports. I did not give consideration to that in making my appraisal.

I would not say that it was a compromise figure. I might say that I thought this man was entitled to more money and another man might think he was not entitled to so much. One might say $4,000 and another one $6,000 and we would make it $5,000. I would not think the figure is too low in each instance, but I would think so in the majority of cases.

I considered all the facts that were presented there on the sheet that was handed to us. I also considered the personal knowledge of the men.

I think I can explain just how I arrived at my conclusion with respect to this appraisal. For example, I have known Ed Elliott since 1903. He is a man of high integrity, a hard worker, and absolutely conscientious. He has been in business for 35 years. If I would work for 35 years and [fol. 862] couldn't make any more than $5,000 a year I would get out of the business. The explanation which I have made with respect to Mr. Elliott is the general line of procedure and discussion which we had in our committee in arriving at these figures. I do not know Les White and Walter Land of Firms 17 and 79 respectively. I can explain how I arrived at the appraised figures in that case. I would defer to the opinion of other men who knew them personally. Some member of the committee might know these men personally and where I could not supply the information I would accept the judgment of the other man.

Redirect examination:

I have some very intimate friends down there and I would not or did not advocate a higher compensation for them on that account. I think it was pronounced throughout the day that greater deference was paid to the opinions of Mr. Hudelson and Mr. Houston, the users of this service.

(Whereupon the witness, Stephenson, was excused.)

A. H. Warren, a witness called by the respondents, after being duly sworn, testified as follows:

I am engaged in the livestock commission business at the Kansas City market. I am connected with the firm of Greer and Company. I have been connected with the livestock business all my life. I first worked in the commission business in 1889 and then I was away for three or four years and have been in the commission business continuously ever since.

[fol. 863] Before I went in the commission business I worked on a farm and rode on the range in New Mexico

seven years as a cowboy. I have been in the commission business in Kansas City for 35 or 36 years. I sell all classes of cattle, fat steers, or butcher stuff, mostly butcher stuff and stockers and feeders.

I have been associated with Mr. Greer in this business for 26 years. I am not an owner in the business. I have observed quite a great many changes. I went to New Mexico in 1885 and you could look over the plains and see great herds of cattle most anywhere. Fifteen years later I went back and you could look out and there was just an expanse of prairie with no cattle in sight. Those ranges have been fenced in now.

Our cattle were usually marketed in October. They came in train loads. That is not the general condition of marketing today. Lots of them are lucky to have a carload even from that southwestern territory. In those days the price range was much lower. There have been marked changes in the handling and conduct of the commission business. The cattle were coming in larger bunches and sold much easier. The buyers seemed to be more plentiful. Today we have to work a whole day to get a buyer on a particular bunch of cattle. We have to sort them in a great many different bunches. I own a farm and have cattle and hogs on it. I think the best service of a commission man *is* to his customer prior to the time the cattle is placed on the market is to keep in touch with the customer and [fol. 864] know the class of cattle he has or the class he wants to buy, and try to sell or buy for him to the best advantage.

In one instance a customer made seven hundred dollars by taking my advice to drive his cattle from the shipping point back to his farm rather than shipping them at that time. That entails a lot more effort than it did years ago, for then the market did not fluctuate as it does now. Not only the work, but the responsibility of the commission man has increased.

Mr. Greer is a competent cattle salesman and has been on the market longer than I have. He has been there about 40 years. The test of a cattle salesman's efficiency is largely the rapidity with which he could dispose of his cattle on the market. It shows his judgment and his way of trading. The point is to know when you are bid a good price. I seldom take the first bid.

We work the cattle out sometimes too long, but as a rule we gain by working them out. A salesman must have some initiative and must also have acquaintance with buyers. The idea is to get a buyer that wants that particular class of cattle. We do not do a large business and we know all of it in mind. We aim to keep in contact with them and keep them advised on the market. We do very little advertising in the papers.

Mr. Greer is in the yards every day. I usually get down to the yards about eight o'clock. We have yardmen in our [fol. 865] employ. It is generally about one or two o'clock when we complete our work in the yards. Sometimes it is three o'clock. I do not do a great deal of office work after that time except write personal letters. There is someone who handles the office work.

We have worked on the plan that a satisfied customer is the best advertisement we could have.

My firm has not sent out market letters or circulars for several years. After the radio came in we thought it was a superfluous expense. We had some complaint about it, but not a great many. We have received very few complaints from our customers about discontinuing the subscription to the market paper. The policy of this firm is to let the service we render be practically the sole factor in getting and maintaining business. Frequently a customer for whom we have been doing business a number of years will bring in a neighbor.

Cross-examination:

When I first began selling cattle I sold butcher stuff. I did not sell any cattle until after I came back to Kansas City, in 1893. I worked for several different firms and I worked for Greer & Co. I do not give very much attention to the farm. I go down on week ends sometimes. My firm gets cattle throughout the entire year. Everybody's business is heavier in the fall. I am usually out in the country on Saturday visiting my customers. Our trading is largely close to Kansas City, and I can run out on Saturday to see a bunch of cattle. I don't get around to visit all my customers but wherever they call for me I go.

[fol. 866] Sometimes I sort and grade the cattle ready to ship, but as a rule I point out certain ones that do not need to come and they will do their own sorting. My firm does

not maintain a sheep salesman. Mr. Morgan, who sells for different firms, sells our sheep. Our business has fallen off some. It is more expensive handling business, and we have to sort cattle closer and weigh in a number of different lots.

Redirect examination:

There was a time when my firm was able to make more money, and I got a good deal more wages than I get now. My salary has been cut on account of the lack of revenue. My health has been extra good, and I cannot remember a day that either one of us has been away from the business on account of health. The audit of our firm shows that in 1929 Mr. Greer drew $3,000 and I drew $2,550, and the firm sustained an operating loss of $3,773.60. I don't think that situation is due in any way to lack of selling or buying efficiency on the market.

Whereupon the witness was excused.

FRANK R. STANDISH, a witness called by the Respondents, after being duly sworn, testified as follows:

I am a stockholder in the Drumm Standish Commission Co. at the Kansas City Market. I first entered the commission business in 1892, and I went to work first as a bookkeeper. I had ridden on the range before that and knew a [fol. 867] little something about cattle. I would go down and go out in the yards and help yard the cattle. I did not need to get to the office until after 8 o'clock. I would like to look over the cattle and mark my idea of what I thought each pen ought to bring. When the tickets come in I would see how near I came to fixing the right values on the cattle. I got a very good idea of the value after two or three years.

I sell all kinds of steers. Western Colorado produces most of the Colorado cattle that we sell. There is a difference in the value of steers which results from the origin or the location from which steers come. The fat cattle from Nebraska right now will bring a little better price on the market than the same cattle coming from Kansas or Missouri. A salesman has to keep posted through his experience or his connections on these differences in value that

relate to the origin of the livestock he handles. Within one location cattle of the same quality will differ in value according to the methods of feed employed. We keep posted on this by knowing the man that fed them and how he feeds and handles his cattle.

When I first started in, the buyers did not care or ask who the feeders were. In the 90's there was not so much sorting. Now cattle must be sorted and graded and also weighed for ownership. If we try to get a buyer to bid on a string of cattle now, the chances are he would bid us so cheap that we could not afford to sell them to him. When we got $12 per car we were making lots more money out of the business, paying a yardman $160 a month, than [fol. 868] we are at our present charges when we pay them $125 or $150 a month. We do a whole lot more work now. The cars are mostly 40 foot, and they used to be 30 at that time.

Specialized buying demands specialization in salesmanship. It is absolutely necessary to sort these cattle. The cattle sell for a lot more. The packers used to go down the line and bid on anything. The packers try to get the best material they can, and their buyers are hired at a mighty good price. The factor of shrink plays a part in the selling of cattle. A differential of 1% in the dressing percentage would amount to more on an ordinary fat steer than the commission charge. It requires experience in judging in the live animal the dressing percentage. Experienced people fail to catch it accurately.

The work in the country has become more valuable to the patron and the salesman. We have more requests to go out and look at cattle in the country, and if we don't keep in personal touch our customers will be complaining. If you don't keep in personal touch with your customers, somebody else is going to. It is an advantage to me to know the cattle and know the customer and his methods of feeding. That is a big help because I can tell the buyer and he knows it is just the way I say it is. I assist some of my customers in pasture leasing. We have some inquiries right now and requests to get grass. That will continue until long in April.

[fol. 869] Our business is highly competitive from the standard of the service we render. It requires constant activity in order to maintain the volume of business. We

make an effort to keep our expenses down, and it has been necessary for us to economize. If you let down in the contact with your customers and prospective customers, you would soon lose out. That has been the history of the business. The competition necessitates keeping in the game. The competition between different markets is very keen.

Cross-examination:

We might have 25, 30, or 40 loads of cattle come in on one train belonging and billed in the names of half a dozen different men. That often happens. There is a tendency for shippers to spread their shipments out over a longer period of time on account of the outlet on the market of late years. A man might want to ship ten loads of cattle at a time, but he is afraid to for fear they would get hung up when they get here.

The first thing that induces a shipper to ship to any particular market or commission firm is that he naturally feels like he is going to get as much or more out of his shipment by going to this particular firm than at any other place. The second reason is that he knows this person or this firm and likes them because they know how to handle the business, and he knows them to be upright and on the square. A neighbor who has shipped cattle is well satisfied and he may recommend a firm. Perhaps more than most any other [fol. 870] business it is largely a personal proposition.

Redirect examination:

The maintenance of an outlet for cattle or livestock generally at one of these terminal markets is a most important factor in its operation. The stockyards company here spent quite a lot of money every year on soliciting Indiana and Ohio feeder buyers. The Exchange spends quite a lot of money along that line. Every buyer that we can bring here just helps the price to the man that ships the stuff.

Recross-examination:

Men who are looking for cattle will buy where they think they are going to do the best, where there is the greatest variety, and so forth. A strong buying power in the market tends to increase the prices. If the prices at two mar-

kets tend to get out of line, the situation would tend to correct itself in a greater or less length of time.

Whereupon the witness Standish was excused.

W. J. GLADISH, a witness called by the Respondents after being duly sworn, testified as follows:

I sell cattle for the Gladish Livestock Commission Company. I have been engaged in that occupation about 20 years. I started selling cattle for George R. Barse who was in the commission business at Kansas City. The employees bought out the Kansas City office.

[fol. 871] I started in business under the name of the Gladish Livestock Commission Company on January 1, 1919. I have a brother that is a partner with me. I have been on the Kansas City yards 32 years. I started out to do yard work.

I have one yardman now that I am paying $165 a month. That is the same work that I was doing at fifty to sixty dollars a month, except he does sell the veal calves.

My brother and I are equal owners of this business. When I started, I could not get an office in the Exchange Building. I made arrangements with William Leitch Sheep Commission Company to office with them, and I am there yet. I have not tried to rent a separate office. I know I can conduct my business more economically by using office space with the Leitch Commission firm. I started in a small way to try to do it all ourselves, and we are continuing the same way.

We pay thirty dollars a month for the space we occupy. My brother handles our books. He also sells the hogs. Leitch sells the sheep if we get any. The commission is divided in the selling of sheep. We could not afford to have a man for what few sheep we have.

My brother and I are members of the Livestock Exchange. I think I have been a member about fifteen years.

We have done very little advertising, and spend very little money in connection with business getting. The bulk of our business comes from previous acquaintance. A good [fol. 872] many fellows that are shipping to me are old shippers of the Barse Commission Company. They should be acquainted by this time with the kind of service that I

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am able to give them in selling their cattle. A satisfied customer recommends us lots of times to his neighbor and we get some business from that source. I get quite a good deal of business that comes from Buffalo and Onega, Kansas.

We cut out expenses somewhat if our general trade lives in the same general territory. It cuts traveling expenses some. It is true that we would gain an advantage if business came from a wider area since crops in one area would not affect it so radically. I sell all kinds of cattle except the calves.

I try to keep in close touch with my customers' cattle operations because it is a big advantage to know how these cattle are being handled. I counsel and advise with some of my customers in regard to the time to ship to market.

A salesman has to work a good deal harder now than they used to. When I first came here we got a good many of them by train loads and now it is usually a single load and possibly two or three owners to the load. Most of them now are plural ownership consignments with more than one owner in the shipment.

Firms that have a larger volume of business have their work divided more than I do. I always feel that I can give it more personal attention and handle it all myself.

Most of my customers are customers who shipped to [fol. 873] Barse. We have to sort quite a good deal more now. It changes the appearance of the cattle and there is a lot of times that we find buyers for one class of cattle, and if we did not have them sorted he would not buy them.

The $11.00 spent for newspaper advertising shown in Government Exhibit 14-17 is the entire sum of my expenditures for that purpose.

I get down to the office about six thirty or six forty-five in the morning. This time of year I get away about five o'clock in the evening except on Saturdays, when I get away at noon. At lots of times in the Fall I am down there until seven and nine o'clock in the evening. I help with the yard work and office work and have letters to write to go out with the account sales. I also buy cattle. I own a horse. I use my own automobile. My brother owns a car and uses it some in the business. I have not made it a practice to charge up depreciation on our automobiles to the business. I charge the gas and oil.

Recross-examination:

My brother is younger than I am and went to work for Barse possibly ten or eleven years after I did. He has been hog salesman ever since he has been with my firm. I draw $300 a month salary and he draws $200, and the balance is split, if there is anything to split. I can do business more economically by officing with Mr. Leitch. The rent on our floor is $25 a month for the blank office. Then we would [fol. 874] have to buy our furniture and fixtures. Leitch has a girl in the office who answers the telephone and takes messages. If we had our own office we would have to have some one in it. Our telephone rate is cheaper. Leitch does not do any of our office work for us. I have not had any experience in employing a salesman. The amount that a salesman can get for his services would really be based on the volume of business that he would control and what you might have for him to do. I think I know most of the cattle salesmen down at the yards. I am not so familiar with the hog and sheep men. I could not give the value of their services if the names were called off to me because I have not hired them and I haven't had them work for me. I would not know what business they could handle or what value they might have. The personal acquaintances that the salesman might have in the country would be worth something to a man in that business. I don't think that a man who is not engaged in the commission business but who knows the salesman personally could fairly estimate what that salesman is worth. I could handle more business with the existing organization if we could get it.

It has grown more expensive to conduct the commission business each year. There are days when our firm receives no cattle at all. We have a fair truck in business.

Redirect examination:

I know John Hudelson of Pomona, Kansas. I do not know anyone that has been a larger patron of this market [fol. 875] or been at it longer than Hudelson. I think Mr. Hudelson is handling somewhere around ten thousand cattle a year now. I see him in the busy season of the year when the cattle are coming in.

I sell all my cattle the day they are received for the most part. I cannot always sell them even if I were willing to take the price. Sometimes we get the kind of cattle that

you cannot find a buyer for and at other times the owner holds you up for too stiff a price and you cannot get it and have to hold them over. I forwarded cattle to other markets last week. I worked on them Thursday and Friday and took care of them Saturday and shipped them out Saturday night to Chicago. I could get all I thought they would bring but not what the owner thought they would.

Recross-examination:

My horse is as good as the average horse down at the yards. We send out a circular letter to about 250 cattle firms. I know all those fellows and there are a few others than don't ship to us.

Redirect examination:

There are horses in the yards that are worth more than my horse. I would not want to pass judgment on the value of all the horses without some study and consideration. If I were going to express an opinion as to what any man was worth as a salesman, I would want to give it quite a good deal of consideration and study.

Whereupon the witness was excused.

[fol. 876] THOMAS F. McDONALD, a witness called by the Respondents, after being duly sworn, testified as follows:

I am engaged in the livestock commission business for McDonald Livestock Commission Co., which is a corporation of which I am president. Associated with me are my son and Mr. John and Ed McGrath. I have been connected with the Livestock commission business at Kansas City for 37 years. The corporation has been in existence for 37 years. Before I organized the corporation I worked in the yards just a short while. My main activity in connection with the business was buying and selling cattle. The other salesmen or buyers of cattle are the two Mr. McGraths and Mr. Tuley, the hog salesman. My son does yard work and helps at the office.

My firm is not advertising extensively for the purpose of expanding our operations. We try to get our patronage through services. Our old customers have quite generally

stayed by us. I had a customer in today with two cars of cattle who shipped to me 37 years ago. He has been shipping to me in this intervening period. Our business has gotten down to the cattle business now. The packers have taken our hogs from us by direct shipping, which has decreased the revenue derived by the owners from the business.

In the conduct of my business I have been endeavoring to be economical in the management but not as much as I should have been in view of the times we have gone through lately. It requires an extra man to bring them over from [fol. 877] the gate whereas previously when they were shipped in our regular man would bring them from the train to the selling pens. In my experience the expenses of handling a given number of head of livestock have tended to increase on account of the increase in the truck in stock, and in the manner of buying. For a good many years a buyer would come in and buy all the cattle in a pen, and he would have them classed altogether. Now the number of sales and drafts have increased and it is a rare thing on butcher stuff that there won't be one buyer buying a few head and another one buying a few more head. The number of head per draft has been growing less each year. That involves increased work and increased expense.

My business does not yield as much compensation to the owner as it formerly did.

Three owners are listed as having drawing accounts in the sum of $3600, $2400, and $1800, respectively, and these men were interested in the concern as stockholders. According to Government Exhibit 14-8 there was an operating loss of $1,286.22. Nothing was set up on the books as return for invested capital.

I did not do any newspaper advertising in 1929. There is an item of $506.19 that was for the Drovers Telegram. The postage on it alone was $102.59. We send out 500 circulars a week.

Mr. Morgan sells our sheep.

[fol. 878] With respect to Government Exhibit 15 it shows the unit cost of handling cattle and calves to be 67¢ per head for any firm, with a general average of 53¢ for all the firms. I don't believe that the firms can handle the business for 53¢ a head. When I was on the Board we took the expenses of all the firms and the earnings and, as I remem-

ber, it was 77¢ a head. We do very little soliciting, and that is one of the reasons for small business and a smaller expense in getting the business. I would not give $100 for the front page of the Kansas City Star for advertising purposes. Years ago we spent $2,500 in newspaper advertising and all we got was an inquiry from a lady who wanted to ship us goats and another party who wanted to ship us cotton mules.

In every respect we handle our business as economically as is possible and give good service to the cusomters. The advice of commission men in the handling and marketing of livestock is invaluable to customers. It is just as valuable to him as salesmanship. The open competitive market for livestock is the only salvation for the owner of livestock.

Cross-examination:

I know that many of my customers ship livestock to my firm exclusively, and they have done that during the entire period that they have been shipping to market. A lot of our customers are dying off and we are not taking on enough new ones to take their places. The bulk of our [fol. 879] business comes from these regular customers. We have had the same organization that we now have and the same set up of salesmen for 25 years. I sell principally steers. Our circular advertising is of very little value. Service is first, in my experience, and then personal letters and personal solicitation. Our soliciting consists principally in going out to see cattle we have bought to appraise their value and advise with the owners regarding them. I make the bulk of those trips. The McGraths own some pastures and handle cattle on them. They give some of their time at the week ends to that. Our firm mimeographs its own circulars. We run them on our letter heads. We generally get ten thousand letter heads at a time. I would say it is a common thing for a salesman to handle five cars in a day. The decrease in the size of drafts has been within the last few years. We got $3,000 for the membership which we sold recently. Our firm has had very small losses during its history from the sale of mortgaged and stolen livestock. I would say in expenses and all from loss from handling mortgaged and stolen livestock it would probably be $3,000 in the past 37 years. We have not had one in a number of years. If we increased our soliciting activities

we probably could increase our business. If we did, we would have to solicit in the same field where other commission firms are soliciting, and if we were able to increase our business it would mean a loss in business to some other firm. Most of the business that we have lost, aside from what was taken away from us by the packers, has been through the death of the parties that shipped at that time. I would say that there has not been very much change in the compensation paid yardmen since the War period. We have not lowered salaries and other costs have increased.

(Whereupon the witness was excused.)

[fol. 880] HARRY KENNALEY, a witness who had heretofore been sworn and testified, resumed the stand and testified as follows:

Direct examination:

At the time trucked in livestock are unloaded they are in the hands of our men that take them to the sales pens from the unloading gates. We don't handle very many fat cattle, by truck in this market. Sometimes the hogs of different owners are bunched together and before they are driven from receiving pens they are marked with a scissors. A man in charge of the gate marks them across the back, the hip, or the side. We keep a record of the stock that we receive, not so much by the name of the party as by the marks. Besides the man at the unloading gates there are two other drives that take them to our sales pens.

One man used to sell 25 or 30 carloads of hogs a day. That would be two or three thousand hogs. I don't think it would be humanly possible for one man to sell that many hogs now. Now you have to sell sows at a different price and the underweights at a different price. They will buy the light ones and weigh them one way and the heavy ones another way. The reason for that is they take the light sows and put them in with their good hogs and kill them right along with them.

On account of the market being so draggy this week the salesman practically has had to oversee all the sorting. The salesman and the yardmen work together in the sort-[fol. 881] ing. The number of head which a salesman can

sell depends absolutely upon the condition of the market. One man cannot do very much now for the reason that the shippers take 35 to 40 per cent of the hogs off the Kansas City market and they have orders for different kinds of weight. Each one buys a different class of hogs. If one salesman were trying to sell all those different hogs, one of these buyers would be getting away from him before he finished with another buyer.

There was ninety cents a hundred spread on finished hogs yesterday.

Yesterday I went out to Drexel, Missouri, to see a man who had 77 hogs and wanted to know whether they ought to be shipped in a freight car or by truck. He trucked the hogs in, and the shrink was four pounds per head. The shrink would have been more if they had been shipped by rail.

This country work is done all through the week the same as on Sunday and every other day. We get through with our work at the yards ordinarily from two to five o'clock. Yesterday we started at four o'clock and got back from Drexel at ten o'clock.

Two years ago there were about six commission firms that did not have a hog salesman. They would have the hog salesman for another firm sell the hogs for them. That was more economical from their standpoint because they never had enough business to retain a salesman.

I have made practically a house to house canvass of [fol. 882] northern Kansas in the last eleven years, and in the last four or five weeks I have made four or five trips up there. I went up there to see why we were losing business out of that territory. We not only had the big packers but we were having some mighty strong competition out of the Hygrade plant. I, myself, bought hogs for the Hygrade Packing Company since I have been in the commission business. At the time I bought them it was the Wolff Packing Company. They are buying no butcher hogs at all now. They are buying a few packing sows.

The firm of Rountree and Banks was in business at Kansas City for six or seven months as an order buying firm. It has now an order buyer at Springfield, Missouri, National Stockyards, and Peoria, Illinois.

Cross-examination:

In the last three or four weeks I have spent several hours at the Fowler Plant here as they are getting to be quite a competitor of ours in the truck in consignments. I go down there to see the handling of them and to see who is bringing them in there.

I have a personal acquaintanceship with probably 90 per cent of the truck drivers that come into Kansas City and I see their trucks because their names are on practically every one of them. Sometime or other they come in our office and I find out from them whom they had over there. We inquire from the truck drivers from time to time where [fol. 883] these men have shipped their stuff.

I am on the market every day except Saturday. Sometimes I am here on Saturday. I spend about three Sundays out of four in the country. I spend parts of 12 to 14 days a month in the country. It is according to the market whether I sell the major portion of the hogs received by my firm. I sell the hogs and have two assistants that help me sell. I personally supervise their work. They help to sort and weigh and they are also office men. They help to make out account of sales.

These assistant salesmen also help in driving the hogs from the unloading chutes to our pens and in feeding them.

On Schedule No. 2 of Government Exhibit 14-51, which is the audit of our business for the year 1929, Salesman No. 4 was a yardman in 1929. He is not in our employ. No. 6 at that time was an assistant hog salesman. He is not in our employ at the present time. No. 1 listed at a salary of $3,000 now gets a salary of $5,200 a year. The salary of No. 2 is the same as it was in 1929. The salary of No. 3 is now $2,100 instead of $1,656. No. 1 is not the man who is with us now at $5,200. Yardman No. 7 would be stricken off.

I do not think a salesman can handle over one third as many hogs as he could a few years ago when we had open and competitive buying on the primary markets.

On the day we had 1,500 head by truck we also had 12 or 13 carloads.

[fol. 884] Fo-r or five weeks ago I made — seven or eight hundred mile trip in a house to house canvass why the shippers out in certain parts of Kansas were not shipping to the Kansas City market. A good part of that business

goes into Topeka, and the Hygrade Packing Company. The reason a lot of them does not come to Kansas City is on account of the increase in good roads in that vicinity, and the competition that the direct points offer to our market.

Redirect examination:

There is no use to solicit rail shipments to the Mistletoe Stockyards because we cannot get the prices for those hogs on our market that they are giving for them at Fowler's. They sort and grade those hogs so closely that we cannot compete with them.

This market is generally about a shipping differential under St. Louis and Chicago. It would have to be or the hogs would not come here. With packing plants as large as the Armour plant or the Swift plant at Kansas City, the packers have to do a tremendous amount of business, and if they depended upon the hogs they bought on the open market in Kansas City they would not compete with the small packers in the business. If they went into the market and bought these hogs, we would receive higher prices because this market here generally is pretty well out of line with other markets.

Direct buying and private yards are the reason there has been a decline in the receipts of hogs on the Kansas [fol. 885] City Stockyards.

Whereupon the witness Kennaley was excused.

J. B. Lingard, a witness called by the Respondents, after being duly sworn testified as follows:

I am a stocker salesman for Ryan Robinson Commission Company. I have acted in that capacity for eight years and have been at the stockyards ten years. I used to feed cattle in the country and was a regular shipper.

Some days we sell the bulk of the stockers and feeders to order buyers and farmers, and some days we sell most of them to traders. Stockers and feeders are cattle that are not suitable for killing purposes and have to go back to the country for more feed.

The first thing I do is to classify the cattle according to

weights and quality and try to make them as uniform as possible. After I get them sorted I start to look for somebody to buy them. Sometimes I have to go and rustle buyers and sometimes they come in and buy what I have without my having to hunt them.

I buy some stockers and feeders for our firm in the afternoons.

The stockers and feeders coming to our firm are pretty well distributed as to the section of the country from which they come. In buying stockers and feeders for customers, I usually find out what my customer has in the way of feed [fol. 886] and how long he expects to keep the cattle, then we ride around and look for something that suits him.

We get quite a good many cattle from the Flint Hill pasture regions of Kansas. During the spring and summer when the cattle are on pasture the owners like to have us come out and look at the cattle about every 30 days. I have done that in the summer time. He wants us to tell him what they will weigh, what they will bring, and when is the best time to ship. I check up to see whether the pasture man is handling them properly. I have correspondence during that period with the owner. We write to him nearly every week.

I always correspond with customers in regard to how their cattle sold and what they have cost, unless they are here. If we wire them, we have to send it collect. I do not handle any of the office work except this correspondence.

Whereupon the witness Lingard was excused.

Bryant Poole, a witness called by the Respondents, after being duly sworn, testified as follows:

I have been in the livestock commission business since April, 1911. I am with the firm of Poole, Dempsey, Rutherford Company, which is a partnership consisting of myself, D. L. Dempsey and James Rutherford.

I was born and reared on a stock ranch. I graduated from the Kansas State Agricultural College. I spent ten [fol. 887] months in old Mexico as superintendent of the livestock operations for a New York Mining syndicate. When I first went into the livestock commission business I did not find myself competent to sell livestock on a public

market. It was three years after I first came on the market that I commenced to sell cattle, and then only the less expensive kind of cattle.

The most recent action taken by the Exchange with a view to reducing the amount of the expenditures of the agency members of the Exchange is the discontinuance of sending the Drovers Telegram to customers, which has effected a saving of something like $65,000. That action was taken during the last year that I was president. I ceased to hold office in June, 1930. We instituted the radio program through which we send the market to the country three periods a day. There were some protests reached the Exchange with regard to the discontinuance of the paper. The people that had a few head of livestock to send to the market were the principal objectors. Action was also taken with respect to the number of days that a member can be in the country soliciting. The Exchange has rules that prohibit employment of solicitors, and rules that prevent its members from spending more than a certain number of days out of each month in the country. Long years ago before I came to the stockyards it was permissible to buy customers' meals. The Exchange passed rules prohibiting that practice and the giving of expensive presents. I consider that the Exchange has been of great benefit and is of great benefit to both members and to the patrons of the [fol. 888] market. If I were in the country producing livestock I would be afraid to ship my stock to a market if it were not supervised by a livestock exchange. I certainly would not do business at a yard without a livestock exchange.

If information reaches the officers of the exchange or board of directors that a member is violating any of its rules in any way, they are immediately brought before an investigating committee, and if he is found guilty he is disciplined. The proceedings are expeditious and prompt. Anyone in the country that has a complaint to make can have it adju-cated by the Exchange. I have examined Respondents Exhibit No. 29 and the forms appearing on pages 1 to 38 of this exhibit are customarily used, in the transaction of business by typical market agencies at the yards. We find it difficult to build up a trained personnel organization that will work and coordinate properly. The three partners accept the responsibility jointly. I might

say that it is up to me to really O.K. or not O.K. a matter. I sell fat cattle and attend to a certain amount of the correspondence, and am just a general advisor in the business. I sell fat steers and I also sell stocker and feeder cattle.

Mr. Dempsey helps me with the stocker and feeder cattle and superintends the bookkeeping end of the business. Mr. Rutherford sells the butcher stuff and looks after the yarding of the cattle in the morning. He gets out about 6 o'clock in the morning. Mr. Dempsey and I get out to the yards [fol. 889] about 7. We hire a hog salesman who has been with us ten years. Mr. Dempsey came with the firm of Harrington and Poole in 1914, and entered the employ as a stenographer and bookkeeper. He got into the selling end of the business by going down into the yards and helping to yard and sort cattle, and spending some time with the rest of us selling cattle. Mr. Rutherford came to the yards the same year I did and worked as a yardman for 8 or 9 years. These gentlemen, in my opinion, are competent cattle salesmen.

The sheep consigned to us are sold by Hinie Klecker, that does an exclusive sheep business. We do not have a sheep salesman. I send out a market card each week. I own two horses which are used in the business.

On Schedule No. 2 of Government Exhibit 14-48 shown is the amount of $4200 which is drawn by me as owner No. 1. That is simply a drawing account in order to have something with which to pay expenses. At the end of the year, any surplus is divided. That is true of the other two owners. I would say that the different grades and classes of livestock shown on Respondents Exhibit 34 is of importance in determining the price of those cattle. I assisted in the preparation of this exhibit. Beef steers of all the breeds and descriptions shown on this exhibit come to the Kansas City market. There is a classification as to kind which affects the value. The same is true with respect to the classification as to origin. There is also a difference as to the finish. The other classifications with respect to age, quality, condition, weight and uniformity enter into the [fol. 890] determination of value. The condition is shown on the following sheet with respect to slaughter cattle and butcher stock affecting the value. The same is true of the next sheet with respect to stockers, and the following sheet with respect to feeders. The same is true with respect to

the next sheet relating to breeding cattle. During the course of the year there is received at the Kansas City market cattle and calves representing every classification contained in the five sheets of Respondents Exhibit No. 34.

Whereupon Respondents Exhibit No. 34 was received in evidence.

Whereupon Respondents' Exhibit No. 32 was received in evidence.

I did not personally make these calculations that appear in the first two pages of Exhibit 34. It might be that a Galloway grasser would come from any one of the States mentioned, varying in condition, and his value would vary in some degree in accordance with the State from which he came.

Cross examination:

I do not think that our firm has ever suffered a loss by reason of mortgage and stolen livestock. We have had some awful narrow escapes. We are constantly on the alert to watch for those things.

Whereupon the witness was excused.

HENRY F. ELROD, a witness called by the respondents, [fol. 891] after being duly sworn, testified as follows:

I am connected with the Ryan Robinson Commission Company. I came to the yards on May 1, 1900. I shipped to the market a number of years before I came to the market to go to work. For five years before I came to the market I was on the market almost every week. I have been president of the Exchange since May, 1930. Previous to that I was a director for six years. I have been selling fat steers for about 20 years, and have been a member of the Exchange about 27 years. I think probably the fat steer salesmen come in competition with the older buyers for the packers. I don't believe I could say that the fat steers were any harder to sell them the butcher stuff. The first three days of the week I try to get to the yards around 6:30. The first thing I do is to sort my cattle with the assistance of a yardman. When we get through sorting we

divide our cattle up and water them, putting eight or ten cattle to the trough. When we get them watered we begin to look for buyers for the different classes of cattle. When we get them sold we put them over the scale. I mark all the tickets of the cattle I sell myself. We have our boys in and out of the building several times during the day to see what other markets are doing.

My firm gets a wide variety of cattle as respects the price at which they sell and the breed, age, weight quality and condition. I have examined Respondents' Exhibit No. 34, and I believe it states with a fair degree of accuracy the [fol. 892] variations which affect market prices as to cattle. We gain our information along that line practically all in the country. I go out in the country to see our customers. We are often able to advise with the customer in regard to market conditions as to whether he should hold his cattle longer or ship them at once. It is of value to a salesman to be acquainted with the particular cattle before they come to market.

The value of this country work to the salesman and to the customer has increased very much. We do pasture leasing work. I think we are of very great service to our customers in getting them the right location where there is plenty of grass and water.

The Ryan Robinson Commission Company is a corporation, and all of the owners of the stock of that corporation are actively engaged in the commission business. The names of the stockholders are F. G. Robinson, George W. Tamm, H. C. Bates, F. L. Merchant, J. B. Ryan, and Henry F. Elrod. F. G. Robinson has been our manager and has been connected with the livestock commission business about 33 years. Mr. J. B. Ryan and George W. Tamm are the other cattle salesmen. H. C. Bates and Forest Merchant are office men. The amounts shown opposite the different numbers representing these men in the audit are a fixed salary and have been for a number of years. If any balance is left after the fixed amount is withdrawn, that would be divided as dividends to the different owners. These amounts were fixed by the owners themselves. Mr. Ryan has been a salesman on the Kansas City market about 26 years. Mr. Tamm has been an employee of the present [fol. 893] firm for 35 or 36 years as a cattle salesman and as a yardman. Mr. Bates came to our firm about 32 years

ago, and Mr. Merchant came to us about 15 years ago. Our firm does not maintain a sheep salesman. Mr. Klecker, who has a regular sheep business, sells our sheep. Mr. B. R. Bridgeford handles our hogs. He has been in this line of work around 35 years. We sustained a loss in 1929 on our livestock commission business. Our firm owns one membership and each one of the five own their memberships individually. The bookkeeper pays the exchange insurance and charges it up to the individuals. My firm does not carry employer's compensation insurance. We do carry mortgage and theft insurance. We sustained quite a loss in that respect about ten years ago, and we have carried it since then. The loss was $2,000 but we regained a part of them from another commission firm. We have had several narrow escapes but no actual losses since then.

I have examined Respondents' Exhibit No. 29. I consider the methods and practices outlined in that exhibit as typical of the operation of my business. I do not believe it would be possible for us to handle our business if we did not have these methods and practices. I don't think I could say that the additions to the number of agencies has benefitted the patrons of the market in the least. I don't believe that adding non-member agencies has bettered the conditions of the patrons to the market. I think competition between agencies has a great deal of effect on the character of service rendered. It tends to improve the serv-
[fol. 894] ice.

Cross-examination:

When I first came with Ryan Robinson I assisted in selling butcher stuff. When I first came with the firm it was operating under the name of Patterson, Ryan and Keeney. Mr. Keeney passed away in 1903 and the name was changed a few years later to Ryan Robinson. I believe I had some stock in the firm before the name was changed. F. G. Robinson and I hold 22½ shares each. R. W. Ryan has just one share and the balance of 71 shares is held by the others in about equal proportion. The salaries of the owners are not determined in any way by the amount of stock with each person owns in the firm. Mr. Ryan bought his horse about 4 months ago for $125. I make my trips out to the country in automobile and train. On these trips I go to our customer's feed yards and advise with them in regard to their livestock.

I do not think that every commission firm on the Kansas City market uses in its business every form contained in Respondent's Exhibit No. 29. In looking this exhibit over I think I see some blanks that are not used in our office. With respect to the exhibit covering the grades and quality of sheep, hogs and cattle, I would say that I was present when those figures were made but as far as going into the detail of that many species, it would be beyond any ordinary salesman to pick them out probably. I have no reason to dispute the figure, but I don't believe it would be in the [fol. 895] power of any ordinary salesman to sort his cattle, hogs and sheep into that many species, even in the course of a good long time.

Redirect examination:

I would say that the work involved in connection with country commissions incurs very little extra expense, as ordinarily we would be showing the buyer the cattle in the country on a trip that we might be making anyway. This business generally relates to comparatively large bunches of cattle. It is revenue that we like to secure as it comes to us with a relatively small amount of expense. It helped us out wonderfully in 1929. We handled livestock that comes through the Prospect and Morris feed yards. Customers shipping quite a distance consider that they can rest their cattle at the feed yard over night and one day, and in that way get a better fill on the market. This is a growing practice. Some of the members of our firm practically always visit the feed yard if there are cattle there over Sunday, or any other time if they are held there any length of time at all. We go to the feed yards in automobiles. We practically always take the customers out there. No charge is made for the service rendered in looking after the cattle in the feed yards. When cattle are held any length of time we make frequent trips to see that they are properly cared for. We have had it happen that the owner has sold his livestock direct at the feed yards and they have moved on to other stockyards instead of to the Kansas [fol. 896] City market. I don't consider the salaries set opposite the names of the owners of our firm as indicative of fair compensation for the services rendered in 1929.

Whereupon the witness was excused.

Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935

No. 686

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vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

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W. M. LIGGETT, a witness called by the Respondent, after being duly sworn, testified as follows:

I operate a commission business under the name of the Kansas City Livestock Commission Company. I am the sole owner of the business. I have been at the stockyards in the commission business about 23 years. I worked as a yard boy for about two years, and after that sold odds and ends, calves and butcher stuff. I sell fat steers. I employ others to sell the other classes of livestock. I have been operating as the Kansas City Livestock Commission Company for five years. I have read the testimony given in this hearing by Fred Olander. His statements concerning salesmen and the handling of the fat steer class agree with my own ideas upon that subject, and they express the methods that are generally employed. Besides some extra help, I had with me in 1929, S. O. Farmer, Alva A. Smith, and Ed. Jackson. Alva Smith sells the butcher stuff, and helps to buy. Eddie Jackson does the yard work and sells the calves, and does some buying. The office man assists in the yards during the busy season in the forenoon. He is No. 5 on Schedule 2 of Government Exhibit 14-20. During the fall of 1930, S. O. Farmer worked in the office as bookkeeper. Alva Smith as butcher salesman, Ed Jackson as yardman [fol. 897] and calf salesman, Fremont Rogers as feeder buyer, and Roy Nance as stocker and feeder buyer. Roy Nance was formerly in business for himself, but he has discontinued his business and gone into my employ. I do not maintain a salaried hog or sheep salesman. I find it much cheaper to have the hogs and sheep sold on a split commission basis by some other salesman. That is done as a measure of economy in operation. On Exhibit 14-20, my drawing account is shown as $3,000 but I have actually drawn only a very small portion of it. It stays in the account there to help us. I did not carry any mortgage and theft insurance, fire insurance, employer's liability insurance, or public liability insurance. Five suits were filed against me as the result of the escape of a steer that year. Those suits are still pending. The first suit is for $35,000. The second for $5,000, the third for $3,000, the fourth for $7,500, and the fifth for $816.12. We were handling a bunch of Texas cattle and we had sold them to be weighed to Swift and Company. We were required to drive those cattle across an

open alley in order to get to the scales, and in crossing the open alley one of the steers broke away from the drove, got outside of the stockyards and come uptown. The plaintiffs in these suits claimed to have suffered personal injury at the hands of the steer, or property damaged. I believe I am being sued jointly with the Stockyards Company. I understand that it was a Brahma steer which escaped. After the cattle had been weighed I reported to the owner that one [fol. 898] steer had gotten away and gone uptown. I told him that the Stockyards Company would reimburse him for the steer. We put in a claim and the Stockyards Company refused to pay it. Later I paid the owner for the steer. I paid him $105.30.

On September 18, 1929, I sold a bull and after he passed over the scales he found a hole in the fence and jumped through the fence and fell to the pavement below, breaking his leg. I paid the owner for that bull, but the Stockyards Company refused to reimburse me. This open alley is closed at night, but it was not closed at the time we were crossing the alley with these steers.

Cross-examination:

I have some land in the western part of Kansas and run cattle and raise wheat. We handle on an average of 1,500 cattle a year. We usually sell them where we can. We can't always get a satisfactory price and we ship them to market. I give hardly any time to ranch operations. I devote quite a good deal of time to appraisal work in the country. It is not done altogether upon request of the shipper. There is hardly a week that we do not get a request to come some place, or send someone to appraise cattle. Our business is about equally divided between feed lot cattle and stockers and feeders. We are getting more mixed cattle every year. At this time of the year we get mostly dry fed cattle in mixed shipments. The grass fat cattle begin to come in July and August. I should say that [fol. 899] three fourths of the total shipments that we receive are sorted for weight, flesh, and quality. Sometimes we sort one load of beef cattle into five or six different lots.

Roy Nance came with us some time in the past three or four months. He controls some business. I am paying him $100 a month. He has been here in the yards about fifteen years.

I have paid nothing on the suits that have been filed against me on account of the steer that came uptown. I have not paid anything except lawyers' fees, so far.

On Exhibit C of Government Exhibit 14-20 there is an item under "deductions from income" amounting to $223.00. One item was for a man who worked for us and overdrew his account. The other was a shipper that shipped a load of cattle and made a draft on our firm and the load of cattle lost money.

Recross-examination:

Roy Nance brought some of his business with him. He told me he was practically broke and wanted to quit business. He said that he would work very cheap. I told him he could bring his desk in and make his home there and do what he was able to do.

Redirect examination:

When Roy Nance came with me he could hardly get around. He was pretty badly crippled.

Whereupon the witness was excused.

B. C. CULP, a witness called by the Respondent, after [fol. 900] being duly sworn testified as follows:

I live at Scottsville, Kansas. I am a producer and handler of livestock. I feed a good many lambs during the year and buy and sell I feed about 15,000 or 20,000 lambs each year. I conduct my feeding operations at Scottsville, Kansas, and Lamar, Colorado. We buy the lambs in Colorado, New Mexico, or Arizona, and generally ship them fat to St. Joseph, or Kansas City. We generally split our shipments to these markets. Freight rates are practically the same. I am a State Senator in Kansas, and I am a member of the Board of Regents. I am a director in the Kansas Livestock Association. I suppose I ship from 50 to 75 loads to the Kansas City market in a year. That includes what I buy on the range and ship direct to the markets. Those are double decks. We generally unload in the feed yards for a one or two days' fill. Practically all my shipments have been to John Clay and Company. As far as I remember the service has always been very satisfactory. I

have no complaint in regard to the amount of commissions that I have been called upon to pay to this market agency for the service rendered. I would say that the charges are reasonable. I want efficiency, and that is what we pay for, and that is what we expect. I have been a member of the Kansas Livestock Association for about ten years.

Cross-examination:

I have been engaged in sheep feeding operations about 25 years. Scottsville is located in the north central part of [fol. 901] Kansas on the Missouri Pacific Railroad. I buy practically all the lambs out on the range. We buy feeder lambs weighing around 50 to 65 pounds. We market them at about 90 pounds. It is a seasonal business. I generally put my lambs on feed in October and November. I am not interested in any ranch operations, and have no interest in any droves on the range. I am engaged in farming operations in Mitchell and Cloud County, Kansas, around Scottsville. It is mostly wheat farming. I am engaged in feeding operations on my own account. I borrow money, generally, for the cost of the sheep. I negotiate these loans with John Clay and Company. Practically all of the lambs are fed at Lamar, Colorado. I bring these lambs in over a period of about two months in the spring of the year. I never load out over two, four or six cars in one shipment. I generally sort a good many of them myself. We sort them to be as even as possible. The loans are generally made for six months. I pay 7%.

Redirect examination:

I am not obligated to consign my sheep to John Clay and Company through any written contract at the time I borrow the money. The customary commission on the range for selling lambs on a per head basis is ten cents a head for buying an order. Ordinarily in a double deck car there are form 300 to 320 fifty to sixty five pound lambs.

Recross-examination:

I usually ship my lambs to John Clay and Company.

[fol. 902] Whereupon the witness was excused.

O. E. HOVER, a witness called by the Respondent-, after being duly sworn, testified as follows:

I am engaged in the commission business, and I am employed by Crider Brothers. I have been in the commission business altogether about ten years. I have been connected with the livestock business practically all my life. I was at the yards about four year-, and then I left and fed livestock, and bought and shipped a good bit. The first time I was in the yards I did yard work. During the last period I have been selling cattle. I think experience would do salesmen a lot of good. If you know your buyers it helps. A good salesman should be a judge of human nature, and he must keep posted on the market. We keep pretty close tab on the number of cattle that are coming, and on the buyers, and what the prospect will be for the next day. I have handled some pasturage contracts.

I use a horse in my operations in the yards. I feel that I can sort cattle better on a horse than I can afoot in the alley. It is an advantage to have a good, well trained horse. I buy a few cattle. I sell the fat steers and heavy feeders. Sometimes we have what is called a "two way market," in which the feeder buyers and the packers will bid for the same cattle. We used to get cattle in bigger droves and they were not so particular about having to sort the cattle. I don't think I ever heard any complaint [fol. 903] against commission charges down in the Flint Hills. I go into the country to appraise the cattle. That is generally done in the latter part of the week when the work is slack in the yards. Generally I have requests to come out and look at the cattle and size them up as to the flesh, and about when they will be ready for market. Knowing the cattle in the country helps me in selling them on the market. If we refused in all instances to look at cattle in the country, someone else would get them. I go down in the yards about 6:00 or 6:30 for the first three or four days of the week. I assist in sorting the cattle. I do work in the office in the way of correspondence. I always write my customers that afternoon or night, and send the account sales out. Prices of fat steers have an effect on the market for other classes of cattle.

Cross-examination:

I went to the country in 1908 and came back to the market in 1925. During that seventeen years I had both a feed lot

and a grass cattle business. I shipped most of my cattle to the Kansas City market. The Flint Hills section in the choice pasture section of Kansas. Pasture contracts are mostly in connection with that Flint Hill Country.

Whereupon, the witness was excused.

B. R. BRIDGEFORD, a witness called by the respondents, after being duly sworn, testified as follows:

[fol. 904] I am engaged in the livestock commission business with Ryan Robinson Commission Company. I handle hogs. I began in 1890, but was in St. Joe about 8 years. I am not qualified to sell cattle. The hog business has been affected very materially by direct buying. It has affected our business very greatly. In my opinion, the men on the market have been unable to compete with direct buying and hold to the market the percentage of volume because of a lack of prices. The price seemingly induced the direct shipments, but our investigation shows that the shrink more than offsets that. It is our idea that the packers buy a large proportion of their hogs direct and take the trouble of operating private stockyards in order to hold the price down on the market. It is my opinion that as the number of head per draft grows less there is a greater loss to the shipper in pounds because the scale breaks on ten pounds, and unless the beam shows a full ten pounds it is slipped back ten pounds. There has been a great change in the amount of work required in selling hogs. When I started in business there was no sorting at all. Practically every load would be sorted now into from two to a dozen bunches. It was easier to handle 10 or 15 loads of hogs ten years ago than it is 3 or 4 loads of hogs now. There is not as much money in the business now as there used to be.

Cross-examination:

I sell practically all the hogs for Ryan Robinson and Company except a few pigs and sows which are sold by a [fol. 905] yard man who is my assistant.

Whereupon the witness was excused.

JOSEPH H. TEDROW, a witness called by the Respondents, after having been sworn, testified as follows:

I am transportation commissioner of the Chamber of Commerce at Kansas City, Missouri. I look after railroad rates and transportation matters for the community as a whole and the members of the Chamber of Commerce. I am an attorney. I have been in my present position for 10 years and have been connected with the organization for nearly 16 years. I have appeared as representative of the Kansas City interest in the various proceedings pending before the Interstate Commerce Commission and other commissions which involve transportation rates and similar matters. I have given attention to rates on livestock and livestock products. The out of pocket expense incident to the handling of such matters has been charged to the Kansas City Livestock Exchange. At the present time there is a contribution made by the Exchange to the Chamber of Commerce out of which my compe-sation is paid. I have prepared a memorandum of some of the matters concerning livestock and livestock products in which I have taken part. From one fourth to one third of our time is devoted to livestock matters in one form or another. When I came with the department in 1915 I found it engaged in opposing a general increase of two cents per hun- [fol. 906] dred weight in livestock rates throughout the entire western territory. This increase in rates was not allowed. The Kansas City Livestock Exchange in 1912 opposed the proposition of the railroads to cancel the special 75 per cent rate on stockers and feeders. This proposed cancellation was denied. In 1923 reduction was secured in livestock rates from Kansas City to Texas points, allowing 50 to 60 cents per hundred weight. Following the reduction in rates on livestock on August 2, 1921, which affected the long haul rates, the Kansas City Livestock Exchange and other exchanges had the case reopened for the purpose of obtaining a reduction in short haul rates. This effort was unsuccessful. The Kansas City Livestock Exchange, through the transportation department, prepared and presented facts concerning the rates on livestock in connection with the hearings held in the Hoch-Smith Resolution. All this involved a vast amount of work by the Department and for months we did practically nothing else. We opposed an increase in the differentials between Kan-

sas City and Chicago and St. Louis. This case was decided July 12, 1929, and we were unsuccessful. The Eastern Livestock case was reopened in July, 1929, and we secured proportional rates two cents lower than the local rates from Mississippi River to Eastern points on traffic from Kansas City. Formal complaints have been filed by packers on rates on meat and packing house products from Kansas City to the Pacific Coast. It will be necessary for the Kansas City Livestock Exchange to take part in these [fol. 907] proceedings. It is my recollection that the expense in connection with the hearing under the Hoch Smith Resolution totaled between $5,000 and $6,000. This does not include my time. I believe the activity that has been undertaken has already been of great value to livestock producers in this territory.

Mr. Biggerstaff of the Exchange has always been right with us all the time, and we have to depend upon him for information. He has appeared as a witness several times and testified a number of times.

Cross-examination:

The Exchange and some of its members are members of the Chamber of Commerce. We take it upon ourselves to watch livestock and livestock products rate matters, and keep the Exchange advised. Ordinary matters are handled without expense. We consider that the dues cover that. If anything comes along which requires considerable extra expense, such as printing, traveling, or hiring of extra help, the amount of that is sent to Mr. Biggerstaff. It is divided among the livestock interests down there, and I believe that the Stockyard Company participates. In my opinion the effect of shrinking the differential between Kansas City and the east coast is to bring more buying power to the Kansas City market. It would improve our prices and attract more shippers to bring their livestock to the Kansas City market. It might temporarily divert some receipts to this market from another market. There should be more or less equal- [fol. 908] ity between the markets. The normal result might be to attract livestock to Kansas City which formerly might have been attracted to Chicago and St. Louis, but we are not getting any more than we are entitled to. In these transportation cases we look upon a certain territory which we feel should be normally the territory for the Kan-

sas City market. All we want is a fair shake and that is all we can expect. The other markets have a territory from which they think the livestock ought to come to their market, but they cannot expect under the Interstate Commerce Act any advantage. It is true that these trade territoires of the different markets overlap to a certain extent. I would not say that the contest over rates arises by reason of those overlapping portions of the territory. In these livestock rate cases I find that the Livestock Exchange and the Stockyard Company at other markets are on the opposite side of the case from me. My idea of an ideal rate situation with respect to the Pacific Coast would be — rate that will make an equality so that the product may be shipped on at the same cost as the live animals. Under existing conditions many of the producers in Western Nebraska found it to their advantage to move their stuff direct to the West rather than shipping it into the river markets.

Redirect examination:

It is the effort or the trend now a days to base the scales or rates more nearly on cost except for the extremely long hauls where the tendency is to blanket them so to keep them [fol. 909] from running too high. The cost of service theory of rate making is now receiving more emphasis than it did in the past. I think it would cost the Exchange four or five times as much money as it is now spending if it tried to maintain its own transportation department. I think it would cost them at least $7,500 a year.

Recross-examination:

I am pretty well of the opinion that livestock rates may be increased generally as the result of the Hoch Smith resolution. In livestock freight rate work I have come in contact with the Texas and Southwestern Cattle Growers Association, the National Livestock Producers Organization, and the American National Livestock Association. There are also the Kansas Association and the Corn Belt Meat Producers Association. Mr. Sanberg also represents the National Farm Bureau Federation, and local associations. None of these Producers organizations are members of the Chamber of Commerce of Kansas City. I do not represent these organizations in freight rate cases.

Redirect examination:

There have not been many cases in which the exchanges at different markets have actually appeared in opposition to each other. That happens in cases where matters of rate adjustments are involved in local territories. Producers were interested in the case in which we got lower rates to the East Coast.

Whereupon the witness was excused.

[fol. 910] JOHN W. ROBERTS, a witness called by the respondents, after being duly sworn, testified as follows:

I live in Chicago and am connected with the Roberts-Pettijohnwood Corporation, which is engaged in accounting and industrial engineering work. I have been connected with that organization since its incorporation on May 1, 1920. In 1899 I began working for the Santa Fe Railway Company as a stenographer and clerk. Prior to that time I had graduated from business college and was a stenographer and typist. My work with the Santa Fe was in the bridge and building department. In a short time I was made joint clerk to the road master and division engineer. I served in that position for approximately two years. I was delegated to accompany the division officials over the road to make bridge inspections. I was promoted to the Superintendent's office as a stenographer to the chief clerk, and in a year or so was made Secretary to the Division Superintendent. I then became head time keeper and distribution clerk. Then I was sent to Colorado to serve the general superintendent as his private secretary. After six months I received an offer from the Rock Island and went to the office of the General Manager at Topeka as statistician in charge of the preparation and analysis of division freight operation sheets. Then, I returned to the Santa Fe office at Wellington, Kansas, as chief clerk in the Division Superintendent's office. Then I was transferred to the office of the General Manager of the Santa Fe at Topeka, as gen-
[fol. 911] eral clerk in charge of contract matters. Then I was made chief clerk in the General Manager's office. Then I went down to Newton as head maintenance clerk for the General Superintendent there who was the same individual

whom I had served as private secretary in Colorado. In 1909 I was sent to Amarillo to help op-n an office of the Vice President and General Manager. A great deal of my time was devoted to construction projects. I then went to Hutchinson, Kansas, and went into business for myself. I then sold the business and was credit manager and office manager for a milling company at Lyons, Kansas. In the fall of 1911 the Santa Fe asked me to return to Topeka and enter the accounting and recording of expenditures relating to roadway improvements and equipment. I became assistant chief clerk and assisted in devising and installing the present division accounting methods. In October 1914 I was appointed a grade one examiner of accounts at the Bureau of Valuation of the Interstate Commerce Commission, with headquarters at Kansas City. I was in that position for approximately two years. In 1916 I was made district accountant of the Bureau of Valuation and put in charge of valuation accounting work on approximately 60,000 miles of railroad comprising some 350 companies, with a staff of 40 to 50 accountants. I was put in charge of the accounting report of the Kansas City Southern Railway's system which was the first large road that went into Federal valuation. I wrote the accounting report and presented the Commission's accounting evidence in that [fol. 912] case. In 1918 I was appointed auditor of the United States Railroad Administration where I remained until the first of May, 1920, at which time the corporation with which I am presently associated, was formed. I am president of that corporation. As auditor of the Railroad Admin-stration I had sole responsibility for the accounting and the general affairs of the Railroad Administration as a whole. I had charge of the books and all the transactions were cleared through my office. I was given complete responsibility for a very large cost accounting project which was involved in connection with the purchase of some 100,000 freight train cars, and 2,550 steam locomotives. It was my first duty to find a place to work, get an office force to work with, and devise ways, means and methods by which control would be exercised over the activities in which the Director General was engaged. I had an office force of about 150 people at Washington, and I had a field force of cost accountants and assistants aggregating approximately 250 men in the field. It was necessary to coordinate and lay out their work, and to educate the men in their duties.

In the last ten years of the work which I have had has had to do with special problem work of one sort and another. I have never undertaken to go into the regular commercial audit business. We were engaged by a number of railroads in various parts of the country to examine their books and prepare their claims or statements of settlements with the Railroad Administration. I was called upon by the Pullman Company to make some studies of their situation which [fol. 913] resulted in a great deal of work being done for the Pullman Company of various sorts. We made shop studies for them at their large plant at Pullman, Illinois, both in their passenger car plant and in their freight car plants. We made special depreciation studies for a number of other car builders. I was engaged as consulting accountant on the Federal valuation work by the Pullman Company. That led to work upon the Pullman rate cases before the Interstate Commerce Commission for which we made very exhaustive studies. I also handled the Pullman Sur-charge Case for the Pullman Company. We have made two complete evaluations of the Pullman Company's property, both of them in connection with the Pullman rate case before the Interstate Commerce Commission. It was necessary to present some evidence pursuant to request made by representatvies of the Interstate Commerce Commission as to the valuation of property used in public service. As a consequence we made a complete evaluation of the physical property of the Pullman Company including some five large car repair plants, store houses, and store supplies located at some 151 points throughout the United States. We also made a comprehensive study of the systems and methods and practices employed in conducting the Pullman operations, and presented that evidence before the Interstate Commerce Commission. We handled two rather important projects for the Rock Island, the first one was a reorganization of the methods of operation in their large locomotive repair shops at Silivs, Illinois, which really consisted in the installation of a production control program. The en- [fol. 914] gagement required several men for a period of 4 or 5 months. The second engagement was somewhat broader in scope and consisted of a general survey of all the mechanical department facilities.

It was about the latter part of June or the fore part of July that the matter of the present inquiry into livestock commission rates was brought to my attention. Imme-

diately I began to inform myself of the marketing situation and the livestock industry as I could gather from the Government bulletins available and writings on the subject. I did not move on the job until the fore part of October at which time men were sent down and the time study was inaugurated. I came on to the work the latter part of October, and have been at it almost continuously since. I made several visits to Kansas City during the summer time before we actually began setting up our exhibits and analyzing the proposition for the express purpose of informing myself about what stockyard operations meant. I spent a number of half days from five o'clock in the morning until things began to quiet down along towards noon time in the Kansas City yards observing the methods of handling the stock and disposing of it. A photostat copy of Mr. Bachmann's working papers, which later became Exhibit No. 15, was sent to me at Chicago during the latter half of September. Assuming that the knowledge of the cost of furnishing these several and individual services rendered by the livestock commission agencies is desired for the purpose of measuring, in so far as cost may properly measure the rates which are permitted to be [fol. 915] charged for these services, it has seemed to me from the start that it was quite important that costs should be as reliable as it is possible to make them because it has been my experience that cost figures can be very dangerous or very helpful according to their quality. It has been my observation on repeated occasions that the use of unit costs may very easily defeat the purpose that they intend to serve if they were misleading as to their purport, or if they were unskillfully handled. With that thought in mind, my approach to this problem on the Kansas City assignment has led me into rather serious discouragement a number of times, and I might also say that having that thought in mind and working from that point of view that it has very seriously interrupted and defeated the original plans which I tentatively laid, because when I got on the job and looked into the records that had been resorted to to gather material out of which the costs in Government Exhibit 15 were fabricated, the findings were very disappointing. I knew that the Government auditors had not made a study of the detailed performance in the yards on the basis on which they might distinguish or differentiate the costs of these individual services which are named in the tariff. It

seemed to me that it would be very much appreciated if we undertook a study of time operations in the yards and provided the means and the basis for a disintegration of the unit costs found by the Government. It soon became evident that the costs set up in the Government exhibit No. 15 were not costs at all. It appeals to me as a per- [fol. 916] sonal responsibility that I should endeavor to complete the assembly of the ingredients of what might be construed a complete cost of service, and I have undertaken to do that, with a great many difficulties, due to lack of records, and lack of details permitting proper analyses of joint expenses. I am very sympathetic and very appreciative and have full admiration for the work that Mr. Bachmann and his crew have done, and do not want to be construed in the position of criticizing his work at all. My criticisms is as to the adequacy of any presentation which can be made under present circumstances to meet the requirements which common sense imposes upon this situation. One general phase of accounting activity is directed toward the maintenance of records which disclose financial status. The other general phase of accounting activity is directed towards what we may consider the determination of costs. The principles and the modus operandi that attach to these different phases of accounting activity are so vastly different that you very seldom find, where accounts, records, and memoranda, started off with one object in mind, lend themselves to the purposes of the other phase of the activity, with any success or satisfaction at all. Accounts which are designed or intended merely to reflect financial status, or to yield such information as is customarily considered needful in the management of a business, might be very successful for that purpose and still be completely unuseful for cost finding purposes. I [fol. 916½] give you my assurance that the records of livestock commission agencies at Kansas City were not kept for the purpose of finding unit costs of service, so that is the inherent difficulty that Mr. Bachmann encountered and which I have encountered. It is my professional opinion that it is almost futile to undertake to dig service costs out of records kept by livestock commission agencies. There is another defect in the present situation in that the statistics as to volume handled do not comport to the services which are recognized by the individual rates set up in the tariff. The time

study which we made was intended to disclose the differences in unit times required to handle the different species according to their various modes of arrival. It was quite obvious that there was a difference in the man minutes per head required to handle not only different species, but the same species arriving by different means. It was ascertained that the accounts and expenses were not distributed in ways that would disclose the difference in expense on a per head basis. We entered upon a study the purpose of which was to test the reasonableness of the gross cost of service provided for under the tariff to the user of the service. I felt it necessary for me to know how the livestock commission business was paid as compared with union labor and farm labor, and how the net revenues compared with the cost of living. I had to get that material together with the idea of finding out where we stood. Some of this material that we have gathered came from sources which did not yield complete inform-
[fol. 917] tion. Most of it was laid aside. The material was not sufficiently comprehensive to merit the confidence as being truly representative of the particular thing that it represented. Certain material which came from sources that are generally accepted as authentic has been set up in exhibits and the inference that I drew from these comparisons was that there was an opportunity for me to go ahead with the work, and that the great probability was the disclosures of my investigation would be of advantage to my clients. The prime purpose of making this survey and establishing these comparisons was to settle in my own mind whether it was engaging in an activity that I might very properly engage in. At the outset of the undertaking and during the period of time that the time study was under way my principal assistants were L. E. Ashley and J. R. Roberts. When I came down to take charge of the job I brought with me my accounting assistant from Chicago, Mr. Linskey. Later on I brought Mr. E. D. Mudd. In addition we have employed two experienced comptometer operators to do the clerical work, and a typist.

Witness gives the qualifications of his assistants.

The Exhibit, which has been identified as Respondents' Exhibit No. 35 consists of seven tabular pages and a graph. It shows the number of head of meat animals received by days during the year 1929 at the Kansas City, Missouri,

stockyards. The graph is based upon the data shown on [fol. 918] sheets 2 to 8. In addition to depicting daily fluctuations and the variation in the weekly volume, as indicated between the red vertical lines on the graph, and the graph also indicates in the bottom section thereof the relative volume which moved during and immediately before and after the period. October 15 to October 28, both inclusive, 1930, which is the period during which we conducted a study of the time required by yard workers in handling different species of animals according to the mode of arrival and according to the singular or plurality of their ownership. The purpose of the Exhibit was, first, to indicate the burden of the work which fell upon the yard forces of the market agencies from month to month, week to week, day to day, throughout the weeks. Secondly, to obtain the comparison of the number of head handled during the test period of the time study, with the actual number of head handled during the test year, 1929, during the same period of days. The time study was deferred until such time as, in the judgment of the committee representing the members of the Exchange, the volume would approximate the average for the year 1929, and at the same time be sufficiently comprehensive of species and modes of arrival, to give us some experience in each one of the different phases of the buying and selling activity for which we intended computing costs. This volume includes through shipments which could not be deleted without considerable difficulty and work. I am very sure that it includes packer directs as well as through-shipments. (Whereupon Respondents' Exhibit No. 35 was received in evidence.)

[fol. 919] Respondents' Exhibit No. 36 consists of six sheets, showing the total number of head received by rail and by being trucked in, and being driven in at the Kansas City market for ten years ended in 1929. The monthly receipts are separately shown for the species cattle, calves, hogs and sheep and the total of all species. The percentage of the head of each species received each month and the total number of head of that species received each year is indicated for each year. These data were compiled at my direction from the annual livestock reports of the Kansas City Stockyards Company, and which I understand have been introduced in evidence as Government Exhibits 8-a to

8-H, inclusive. For the years 1920 to 1924, the headage shown on these tables includes throughs and directs moving through the yards. For the years 1925 to 1929, inclusive, the figures include directs through the yards but the through movement is excluded. Sheet 1 of this Exhibit is a graph, showing the fluctuation in total volume from month to month through the ten year period. The graph is set up to indicate the quarters rather than the monthly periods of each year. The abscissa of this graph represents years, and the ordinate the grand total of all species. Sheet 2 of this Exhibit shows the fluctuation in the volume, by cattle, calves, hogs and sheep respectively. The purpose of this Exhibit is to throw some light on whether 1929 was an abnormal or subnormal year, or whether the volume that moved during that annual period was normal. The two graphs indicate to my mind that there were no abnormal [fol. 920] circumstances and no subnormal conditions appearing in the year 1929 which would require special consideration and special treatment. Although I would be quite reluctant in accepting 1929 as representing a typical year. This reluctance is prompted by the fact that the graphs indicate the *the* volume is declining, and with respect to cattle has shown a consistent decline since 1923 and 1924. The movement of hogs and calves has been somewhat erratic. The movement of sheep has been quite steady. (Whereupon Respondents' Exhibit No. 36 was received in evidence.)

Respondents' Exhibit No. 37 is one which was prepared for the special purpose of relating the species movement to the total movement of all species, for the years subsequent to, but including, 1913. It consists of two sheets, the first of which is a graph, drawn in two sections, the upper portion of which shows the fluctuation in the volume of all species of meat animals by years, 1913 to 1929, and on the lower section of the same scale, there is shown the fluctuation in the volume of cattle and calves, collectively, hogs and sheep, respectively, by years. The object of setting up these figures and preparing this graph, was to obtain a picture of the fluctuation in volume during this interval for use in connection with other studies which had to do with comparison of the level of commission rates, the cost of living, wage rates and so forth, obtaining during the same interval, all

of which are based on 1913 as unity. The top line of the graph is all species, by all modes of arrival, but the lower graphs are the rail element of the arrival of all species. [fol. 921] Sheet 2 of the Exhibit shows that there was a very substantial decline in the number of head received by rail and a very substantial increase in the number of head arriving by other modes of arrival.

(Whereupon Respondents' Exhibit No. 37 was received in evidence.)

Respondents' Exhibit No. 38 consists of four sheets, the first three of which are graphical presentations, and the fourth of which is a tabular presentation of the yearly receipts of the number of head of meat animals at the Kansas City market, for 40 years, 1890 to 1930, inclusive. The trend, as shown on the first three sheets of Exhibit 38, is based on the five years moving average. Sheet 1 of the graph shows in the upper reaches of the scale that trend of the movement of cattle, and the lower reaches of the scale the trend of the movement of calves to the Kansas City market. Sheet 2 shows the trend of the movement of hogs and sheep. Sheet 3 shows the trend of the movement of all species of meat animals. The prevailing tariffs provide separate rates for handling cattle, calves, hogs and sheep, and it goes without saying that the amount of a rate is in itself not determinative of the net revenue which the service provided may earn thereunder. The amount of the rate and the volume of turnover under that rate is a significant thing. The question of the prospective volume of movement under any rates that may prevail in the future is one of [fol. 922] very great moment. (Whereupon Respondents' Exhibit No. 38 was received in evidence.)

Respondents' Exhibit No. 39 consists of two sheets, showing the relative retail prices of food at Kansas City, Missouri, Omaha, Nebraska, and in the United States, by months, for the three years ended December, 1929. These data are based upon 1913 as unity, and were taken from the statistics of the Bureau of Labor. The object in offering this Exhibit is to throw such light as was available upon economic conditions obtaining at Kansas City and in the United States generally.

(Whereupon Respondents' Exhibit No. 39 was received in evidence.)

Respondents' Exhibit No. 40 consists of three sheets, the first page of which is a graphical presentation of certain trends, and the last two sheets of which are statistical data upon which the graph is predicated. This Exhibit purports to show the relative price levels obtaining on wholesale livestock on the hoof, and poultry, wholesale foot meats and retail food meats in the United States, and the approximate gross yield of the Kansas City livestock commission rates for the period 1913 to 1929, both inclusive. Some of these index numbers shown on page 2 were predicated on 1913 and others on 1926. As regards the retail price of meats, I may say that they are weighted as to the average consumption of the United States for the different years, and the weighting of the several factors comprised in this classification of retail meats is shown on sheet 3.

[fol. 923] The level of the gross revenue of Kansas City Livestock Commission rates obtaining since 1913 is developed on another exhibit. My object was to throw some light upon the relative level of prices obtaining for commission men's services furnished the public patronizing the market. This exhibit shows a spread between the live cost of the livestock referred to and the retail food meat prices. The trend of retail food meat prices was not accessible prior to 1920. As far as my knowledge goes, the statistics of the Bureau of Labor Statistics are generally accepted as being what they purport to be.

(Whereupon Respondents' Exhibit No. 40 was received in evidence.)

Respondents' Exhibit No. 41 consists of two sheets, and relates to the carrying capacity of stock cars as it has appeared of record from the years 1913 to 1928, inclusive. Sheet No. 1 of this exhibit contains a table which was taken from statistics of railways in the United States. At the bottom of the first page is a graphic exhibition of the change in the carrying capacity of stock cars on western railroads, with a superimposed line, which, observing the trend of the enlargement in the capacity from the years 1920 to 1928, carrying the development forward to the point where the present recognized maximum carrying capacity of stock cars is attained, showing what this trend would be in 1938. It seemed to me that it would be interesting, and perhaps instructive, to know the increase in the carrying capacity [fol. 924] of stock cars and what it is likely to be in the

future. It seemed to me that if there had been and was likely to be an increase in the carrying capacity of stock cars, either due to the fact that the inside measurements were greater than formerly, or if the number of animals handled per carload increased in number because of their size being somewhat less than they formerly had been, they would be factors that should be given consideration in fixing rates. The average capacity of a stock car on western railroads in 1913 was 31 tons. If the development in carrying capacity is carried on it will reach 40 tons in 1938, which will be an increase of 29%. Western district roads are those roads which serve the territory lying generally west of the Mississippi River, and include the roads serving the southwestern territory. I know it to be a fact that the Santa Fe Railroad has relatively few stock cars at 36 feet or shorter. I know that the Northwestern, the C. B. & Q., the Milwaukee, the Great Northern, the Northern Pacific, and the Union Pacific have been following a program of modernization and standardization of their freight carrying cars in the last few years.

(Whereupon, Respondents' Exhibit No. 41 was received in evidence.)

I am perfectly satisfied to say that during the next four or five years this development in the carrying capacity of stock cars would not be less.

Respondents' Exhibit No. 42 is a copy of certain material which was supplied by the Bureau of Animal Industry upon request.

[fol. 925] (Whereupon, Respondents' Exhibit No. 42 was received in evidence.)

Respondents' Exhibit No. 43 consists of one sheet, which is a columnar graph which purports to show the per cent of price paid by the purchaser which was received by the seller as net proceeds from cattle and calves, hogs, and sheep sold on the ten terminal markets for the years 1924 to 1929, respectively. These markets include Kansas City, and Kansas City's column in the graph is noted in red. This information is taken from Bulletin No. 38 of the Bureau of Railway Economics at Washington, D. C. issued June, 1930. This Bulletin has been introduced in the record as Respondents' Exhibit No. 20. It may be said that

it represents data covering 18 sales days at three week intervals during each of the periods ended October 6, 1924; October 19, 1926; November 1, 1926; November 14, 1927; November 26, 1928; and December 9, 1929. My object was to show that regardless of what may have been the reasons therefor, the net proceeds derived from livestock marketed at Kansas City compared favorably with the proceeds derived at any one of the other nine markets shown.

(Whereupon, Respondents' Exhibit No. 43 was received in evidence.)

Respondents' Exhibit No. 44 consists of six sheets, the first of which carries a graph and the last five of which contains tabulated statistics which bear upon the subject of the approximate relationship of the gross revenue yield of [fol. 926] livestock commission rates effective at Kansas City, Missouri, during the years 1913 to 1929, both inclusive, related to the year 1913 as 100 per cent. This exhibit represents the best efforts I was able to make in determining the relationship between the livestock schedule of tariff rates which is under consideration here and its predecessor schedules running back to 1913, considering the changes in the construction of the tariffs which have occurred in the interim and the fluctuations in the volume which have occurred annually, *and the fluctuations in the volume which have occurred annually,* and the change in the character of the annual volume as regards the species, content thereof, and the mode of arrival of animals at the Kansas City market. In measuring the relativity of the gross yields of the various tariffs, as well as the present tariffs which have prevailed since 1913, I have taken the 1929 volume and used it as standard. I have priced out this volume at the rates set forth in the different tariffs for the years during which those tariffs obtained. We have tried to work this thing out and adjust the computed revenue for each year according to the variances which have entered into each year's picture. It is to be understood that this exhibit is not offered as an accurate indication of the gross yields of the respective tariffs, but it is the best information which was available which has a bearing on the subject. We did not include any income from charges for extra services.

Whereupon Respondents' Exhibit No. 44 was received in [fol. 927] evidence.

Respondents' Exhibit No. 45 consists of three sheets and it relates to the relative levels of farm wages in the United States, Union wages in the United States, general wages at hourly rates, excluding agriculture, the cost of living in the United States and at Kansas City, approximated gross revenue of the Kansas City Livestock commission rates for the period 1913 to 1929, the comparison being based on 1913 as 100 per cent. From the graph it will be observed that the general level of the gross revenue derived from the commission rates is somewhat below the rates of compensation paid Union labor, general labor, and even farm labor, and moreover that the level of the commission gross revenue is somewhat below the cost of living at Kansas City and the cost of living at Kansas City is somewhat less than the general average cost in the United States. I was unable to get a very clear impression one way or the other as to what, if any, variation there had been in wage rates paid by market agencies on the Kansas City market, but such impression as I did get was that they had remained on a pretty stable basis.

Whereupon Respondents' Exhibit No. 45 was received in evidence.

Respondents' Exhibit No. 46 consists of two pages and is a copy of an article appearing in Bulletin No. 491 of the Bureau of Labor Statistics of the United States Department of Labor. This article makes reference to important [fol. 928] instances where the statistics of the Bureau of Labor have been employed in adjudicating wage controversies and matters relating thereto. My thought in including it as an exhibit was that it threw some light on the extent to which the people who are considering these matters of wages and compensation for services have come to depend upon statistical facts to guide them.

Whereupon Respondents' Exhibit No. 46 was received in evidence.

Respondents' Exhibit No. 47 is entitled "Ratio of Commissions earned to Gross Market Value of Sales and Purchases made on the Kansas City Market by all Firms Including Cooperatives, 1926 to 1929." This statement shows information which is obtained from sources referred to in the footnotes at the bottom of the page. The gross value means the gross value less the deductions from commission,

freight, yardage, and other deductions appearing on the account sales or accounts purchases.

Whereupon Respondents' Exhibit No. 47 was received in evidence.

Respondents' Exhibit No. 48 has to do with the study which was made for the purpose of determining the difference in the time required on a unit basis to handle livestock of different species arriving by rail in straight and mixed carlots of single and plural ownership, and that which was trucked in and driven in, and that which was planted in the yards by dealers and speculators for resale. The work per- [fol. 929] formed by the yard employees of these livestock commission agencies is of such a nature that it is quite difficult under any sort of circumstances to partition the time to different accounts on an accurate basis. The manner in which the time records and accounts are kept as a matter of general routine precludes the procurement of any data as to time spent by workers individually or collectively on the respective species unless their whole time is devoted to the handling of that species. The tariff under consideration names specific rates for straight and mixed carloads on the different species and observes a differential as respects whether the headage in these shipments in owned singly or in plurality. It was the purpose of this time study to provide the means of establishing a differential in the cost or expense of handling these different sorts of consignments which would comport with the differential represented in the tariff rates. There are 65 commission agencies operating on the Kansas City market and each of those firms has space allotted to it in various parts of the extensive yards. Some of them handle all species and some of them handle only one, and others maybe two. It was decided to select certain firms which were representative firms in their class, and it was recognized that there were three general classes of firms, the large, the small, and those which come in between. The volume, playing a very important part upon the unit time required to handle the business, it was thought that in this way we would probably obtain an average which [fol. 930] would be fair for use in breaking down the distribution of expenses to species accounts, arrival accounts, and ownership accounts. The third sheet of the exhibit is a roughly drawn plat of the yard location, showing location of the pens of those agencies which were embraced in the

time study. I had been over the yard before the work was undertaken and visualized what I thought should be done in the way of a time study, and had discussed, rather thoroughly, with members of the Exchange who had been appointed to consult and advise with me in this matter, and had been able to give the general subject several weeks of thought and consideration.

On the fifth of October, I dispatched two men to Kansas City from Chicago to undertake this work. They spent the following days, until October 11 or 12, in the yards studying the movements and the methods employed. During this period, they prepared certain cards and sheets which were to be used in collecting the information as to the time distribution daily. Certain cards were drawn up which the yardmen were to use and certain sheets were prepared which the salesmen and buyers were to fill out. Certain other forms were prepared, which the office was to fill out with respect to the actual volume handled on the respective account sales and purchases which comprised the day's business during the period.

There were some eighty odd men covered by this study, including salesmen, buyers and yardmen. We found that it was a feasible matter to require the yardmen to keep a [fol. 931] record of the manner in which they spent their time each day, and to show the particular consignment which was responsible for every move and the time which it took. These cards were surrendered to one of our men each evening, and if there were any questions of doubt as to the propriety of the distribution which was made, the yard worker would discuss the matter with the party who was drawing, the information off. With respect to the salesmen and the buyers, however, it was not deemed expedient to have them keep a memorandum record of their time distribution each day. The functions of the work which were to be observed in the classifications, as well as the kind of of service to which those functions attached, had been settled upon. The salesmen and buyers were directed to report to a certain room in the Exchange Building each evening and the distribution of their time was recorded from their reports which were usually made in an oral way, although sometimes from data which they had noted down during the day. This information, which was gathered in this fashion was collated and analyzed and balanced out

against the total time worked by all employees under test, the appurtenant volume and the number of drafts.

This time study was not made with a stop watch, but it is my belief that it still possesses integrity sufficient for this purpose. The line of demarcation between functional operations in a work of this sort is not very plainly indicated sometimes. There is a considerable amount of time which is not employed in a directly productive way. The workers had had no experience, except in one or two in- [fol. 932] stances, in keeping daily distribution records. The records were kept first on Tuesday, October 14th. The records were immediately reviewed with the parties who had compiled them and misconceptions of instructions were corrected. The first day's records did not enter into the study. The record was started with Wednesday morning, October 15, and ran to the close of October 28th, which gave two full weeks. The manner in which the time data was summarized and disposed of in a statistical way is set out in the explanatory narrative which comprises three and one half pages of this Exhibit. The time study plan did not include the members of the office force because the work of the office men is so interrupted and is so diversely applied as to make a study of the time distribution in the office impracticable. The general plan of this time study is to recognize three different classes of yard employees. We have the yardmen in one class, the salesmen in another class and the order buyers in a third class. It was also the plan to recognize four different classifications of service by arrival accounts, that is, the straight carloads, the mixed carloads, the drive in volume, and the seconds. It was intended to break down each of these accounts to the various species, and again to single and plural ownerships. It was virtually impossible to make a distinction between cattle and calves without resorting to strictly arbitrary tactics. It was finally deemed advisable to consolidate cattle and calves and treat them as one species. Occasionally there [fol. 933] has been some difficulty in disposing of the time charged to mixed cars. The results of this study have been used in connection with certain unit cost analyses which we have made. For example, we have a salesman whose times is classified as appertaining to the sale of cattle and calves only, and the volume handled embraces straight carloads subdivided between single and plural ownership,

mixed carloads subdivided by single and plural ownerships, drive ins, and seconds. The question becomes one of what distribution should be made as between these service accounts. In breaking down a man's time, we have employed the ratios of differentials expressed in minutes per head, as a result of this time study, taking the weighted average results of the study. The ratios to which I have referred are set up for yardmen and for salesmen, and for order buyers separately, and are the composite of the information developed for each functional operation. The data are brought to a head on Schedule B of the time study. On Line 8 of this Schedule is shown the index number which has been used for no other purpose than to visualize the differential in time requirements. On Schedule D, the salesmen employees are dealt with, and on line 16 is shown the average minutes per head per salesman, which was developed after substantially the same plan as referred to in the case of yardmen. The salesmen's time was distributed to functional accounts for sorting and grading, showing and selling, weighing, general yard work, and office work, the [fol. 934] office work being subdivided as between sales correspondence, time consulting customers, and country work. It would unquestionably be very expensive to undertake to keep actual cost on these services even by species, for the reason that there are only a limited number of workers, and they are engaged upon a maximum number of occupations.

(Whereupon, ruling on the offer of Respondents' Exhibit No. 48 was deferred.)

Respondents' Exhibit No. 49 is a statement showing the basis for accruing depreciation on depreciable property to be included in the calculated costs of service, and also the amount of such accrued depreciation by classes of property. The purpose of this Exhibit is to provide an adequate provision in the cost for those losses which ensue through the impairments of invested capital in property of this kind. The hypothesis here is that the service provider is entitled to some fair rate of return upon all of the capital which he devotes to the enterprise, and which is used in behalf of the public. The books of accounts of the 65 commission agencies in Kansas City fail to disclose, in many instances, either the original cost of the present day fair value of the

furniture and fixtures and equipment. It is my understanding that the service provider is entitled to an allowance for depreciation to the extent that it actually accrues upon its property. We made an inventory of this property and applied to it prices which we gathered from local sources, and approximated the reproduction new cost as at Decem-
[fol. 935] ber 31, 1929. The inventory was adjusted back as well as could be to that date. The property has been classified according to the different kinds of property, and there has been applied a rate of annual depreciation. The amount of accrued depreciation for the 65 firms is $12,-939.45. The data with respect to prices were obtained from local merchants at Kansas City. A committee of the members of the Exchange, who have an extended knowledge of the personnel, selected the group of individuals who made the inventories on the various floors. I checked the different offices and determined the condition of the property as I perceived it from a service value standpoint. I fixed a 5% rate on movable furniture with the idea that it was fair. If I had it to do over again I would probably cut it down to about 4%. If the entire amount would have been left out, it would have had an unimportant effect upon the unit cost.

(Whereupon, Respondents' Exhibit No. 49 was received in evidence.)

Respondents' Exhibit No. 50 consists of a summary of sundry insurance accruals other than fire insurance, which are set forth in detail on four subschedules covering mortgage and theft insurance accruals, workmen's compensation insurance accruals, public liability insurance accruals, and property damage livestock in custody, other than fire insurance accruals. Other than fire insurance on furniture and fixtures, these schedules represent the predictable and
[fol. 936] coverable hazards which attach to the operations of these agencies. There are many other firms that carry insurance of the four different kinds referred to, and the disbursements on account of the office were included in the accounts for 1929. Insurance premiums may overlap fiscal periods, or they may cover expenses for two or three years in advance of a deficiency for a previous year's expense. I have made an aggregate of all the accruals that have been deducted for insurance that were carried in the ac-

counts for 1929 from the aggregate of all accruals, as shown in this Exhibit. The difference is the amount accrued for the purpose of stating expenses in calculating the unit cost. In the case of mortgage and theft insurance, all livestock was reduced to a carload basis, and the rate of ten cents per equivalent carload was applied. In regard to workmen's compensation and liability insurance, it was necessary to divide the payroll between Kansas and Missouri, and to each payroll was applied the rates applicable in the respective States. The same separation was made with respect to public liability insurance. The rates on the coverage for property damage were supplied by the Hartford Fire Insurance Company of Hartford, Connecticut. The total accrual on this schedule amounts to $191,-162.00. There is offset against this amount certain premiums paid and certain accruals made and stated in the accounts for 1929. There are only two or three firms which have expenses for insurance of this general character. These insurance accruals do not constitute accruals with [fol. 937] respect to all risks concerning which we could find definitely quoted rates by reliable insurance companies. I refer to the risks of losses ensuing through a failure of banks handling the collection of drafts. I was given a rate but could not find a base to which to apply it. The reason I could not get a base was that certain of the collectables entering into the agencies' transactions are protected by bonds.

(Whereupon, ruling upon the introduction of Respondents' Exhibit No. 50 was deferred.)

Respondents' Exhibit No. 51 is a calculation of the cost providing full coverage under a one year policy of loss against fire, and relates to the insurance on destructible property in the way of office furniture and fixtures and equipment. For the cost of full coverage there is deducted the fire insurance premiums that are actually paid and charged to expenses during the year 1929.

(Whereupon, ruling upon the offer of this Exhibit in evidence was deferred.)

Respondents' Exhibit No. 52 has to do with invested capital. Sheet 1 of this Exhibit is the general summary of invested capital necessarily employed in the conduct of the

business of the commission agencies to the extent that it can be calculated. This Exhibit is not offered as representing 100% of the invested capital which is employed. This Exhibit consists of six subschedules referred to by sub-
[fol. 938] letter references which relate respectively to furniture and fixtures and equipment owned and used; membership certificates in the Kansas City Livestock Exchange which are owned and/or used, the materials and supplies on hand, the working capital required to finance operations, the working capital necessary to finance sales and purchases, and the value of established and proven methods and practices in use in the yards and offices. The principal of the sum of these enumerated items is $1,274,-856.00, and 8% on that amounts to $101,989.00. The second sheet of this Exhibit deals with the investment in furniture and fixtures and equipment. It was not practicable for us to put an estimate reproduction cost value on the automobiles. There are a few automobiles owned, but the investment in that class of property is not a very large sum. In setting up these figures, I took the book value of the automobiles, and also recognized the depreciation which Mr. Bachmann had set up in his Exhibits with respect to them. In column B is shown the estimated sound value of furniture and fixtures as inventoried at December 31, 1930. Column D shows the estimated sound value as at December 31, 1929. The next schedule refers to the investment in memberships owned and used in the conduct of operations. It shows the number of memberships used and owned, and used but not owned, the identity of a membership by certificate number, date of issue, name of holder, status of holder, and the current sound value. Appended to and considered a part of this schedule is the following
[fol. 939] sheet containing affidavits with respect to the sales of memberships. I have used the round figure of $2,090 as the unit value of the memberships. I used the sales of the memberships for the years 1928, 1929, and 1930. The Exchange holds these membership certificates at the standard price of $5,000. I would like to offer for identification, supplementary certificate containing the original copies of sixteen affidavits obtained from the purchasers of the certificates. I have not included certain memberships which are owned in fee and held in the name of and used by certain salaried employees who have no

proprietorship interest in the concerns which they serve. There were eight firms out of the 65 agencies covered by this exhibit on whose balance sheet appears items of investment in material and supplies. Schedule No. 14-D, which is part of Exhibit No. 52, relates to cash working capital. In Column One appears the total charge for salary and wages for the year 1929, and has been adjusted to respect the appraised salaries of the owners and joint owners. In column B appears total expenses other than salaries and wages, and other than administrative and general expenses. In Column C appears the total administrative and general expenses. In Column D appears the accrued charges for sundry insurance protection. In Column E appears the accrued charges for fire insurance. In Column F appears the depreciation accruals as set forth in Respondents' Exhibit No. 49. Column G is the total of columns A to F, and represents the total disbursable net [fol. 940] expenses for the year. Column H is the daily average disbursable expense for the year 1929. Column I represents the average capital requirements for the respective firms to meet the expenses set forth in detail in the preceding columns. In a study of the float of these firms, it was found that the reimbursement of their expense was deferred to the extent of .569 days. The service not being a prepaid service had to be performed before the revenue resulting therefrom was collected. According to my reasoning, there was one day's average expenditure invested, plus .569 days of deferred collection. Hence we multiplied Column H by that figure to get the daily cash working capital requirements as shown in Column I. Now, there are certain items of expense which have to be paid in advance, such as office rentals, light, heat, postage, travel, and clearing house dues. In columns K and I are shown the amounts which come within the category of prepaid expenses. The expenses paid annually in advance are confined solely to insurance premiums and bond premiums. The average investment of these monthly prepaid items is the equivalent of one twenty-fourth of the sum for the year, and this average investment is noted in Column N. The average investment of the items prepaid annually is equal to one half of the annual sum, as noted in columns K and L, and that amount is noted in Column O. The principal amount of invested capital required to carry on one

year's operations is shown in Column P. 8% annual return on this requirement is noted in Column Q, and amounts to $19,581. There is a requirement for cash working cap- [fol. 941] ital at certain seasons of the year which is undoubtedly in excess of the average amount which is developed by these calculations. We have been obliged in these statistical studies to deal with averages, which levels off the peaks and fills up the valleys. I believe it is oftentimes considered that this temporary superfluity of cash working capital cannot be invested for short terms for 8%, which is here considered as a fair yield. The next subdivision of this Exhibit has to do with the item of cash working capital as it relates to the financing of sales and purchases. The facts were obtained from an analysis of the daily cash analysis sheets of the Interstate National Bank for certain firms which are customers of that bank. The bank shows from day to day the outstanding and unliquidated items which are in the process of collection. From these statements it was possible to identify the individual items that were in float, and by referring to their cash books we could determine whether these items related to sales transactions or to purchase transactions. In this way we were able to obtain the dollar days of float. In the case of other firms and other bank statements, we were able to get the total dollar days of float in the case of certain agency customers but we were unable to analyze this float as between sales and purchase transactions. With respect to some of the agencies we were unable to obtain any information as to the float upon their sales and purchase transaction, upon all of their transactions, and in that case we were obliged to consider that they were amenable to [fol. 942] the average which we had established by a complete analysis of the other firms. It may be noted that the average daily requirements of working capital to finance sales and purchases transactions, as developed from the dollar days, as shown on the separate sheets, was $415,436.17. This float, as calculated, is not inclusive of all the float or of the investment that is required to finance these transactions, for the reason that this study picks up this float only when negotiated paper is deposited in the banks for collection, and there is some additional investment of some of the agencies' capital in some of these transactions prior to this time.

The last subdivision of this exhibit relates to that part of the total invested capital which is represented by the investment in methods and practices employed in the yard and in the office as an essential and indispensable part of the equipment used in providing the services. This is property of a nonphysical nature, but nevertheless property in the same sense as the physical property. This sub schedule undertakes to set forth on a basis which is intended to be conservative and demonstrable the estimated reproductions costs of those methods and practices which are to be found and which are very apparent in the operation of the yards and offices. The figures rest upon an estimate for which I am personally responsible. Column A sets forth the estimated costs of re-establishing mailing lists and the customary records with which each of the several firms is equipped. The amounts shown in this column represent an [fol. 943] estimate of the labor required and the expenses which would need to be laid out for the material such as index cards and whatever it may be to reestablish their mailing lists and to subdivide them according to the classifications as to territory locations, class of stock, and seasons.

I have made it a point to talk to everybody on the market who had any knowledge of these questions and the cost of establishing mailing lists and keeping them pruned down to what might be called a productive basis. This information along with my own experience led me to the conclusion that a very conservative estimate of the cost of establishing names on these mailing lists would be about 20 cents per name.

In case a firm has an independent list of its customers, as is true of some firms, I added an additional 5 cents to represent the cost of setting up this list. The amounts appearing in column B refer to the office methods, systems and so forth, which are in use. That is an estimated figure. I have gathered certain information as to the kind of books that they keep, the forms that are in use and the sort of systems of accounts that they observe. I estimated what figure I felt I could afford to quote these people in the event they asked me to undertake to set up a set of records which would accomplish the same purpose as they have now. I have allowed time of a senior accountant at $50 a

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day and a junior helper at $30 a day to each phase of the [fol. 944] development in the case of each firm.

In column D on this sheet appears a similar estimate, which relates to methods and practices which are in effect in the conduct of yard operations. This estimate also is the product of my own endeavors to provide a figure which would be a fair estimate of the cost of reproducing the present situation. It contemplates that an analysis of the problem and concentrated study of it would provide procedures which would be the substantial equivalent of those now in use, notwithstanding that methods and practices presently employed are actually the outgrowth of many years of practical experience rather than the result of theory and planning. The hypothesis also contemplates that the methods presently employed by the Kansas City Stockyards Company, to the extent that they affect the market agencies' operations would be non existent, and to the extent that their hypothetical development and adoption entailed cooperation upon the part of the agencies in order to insure their workability. This has particular reference to receipt and delivery, the payment of freight and the collection of yardage and other charges, weighing, loading and billing ship outs, counts and their verification, yard clearances, feed orders and supply, and payment therefor and all other inter company transactions. It is also assumed that to whatever extent the methods and practices of local packer buyers presently affect the routines and policies underlying yard operations, that they would be non existing. The estimate does not contemplate the time which would necessarily be spent by the agency owners in [fol. 945] considering, criticizing, modifying, and ultimately adopting the plans of organization submitted by those engaged in organizing the activities. If it assumed that a staff of workers required to administer the plan would be available for instruction preliminary to the actual beginning of operations. It contemplates time and expense incident to their instructions, the setting of the task and the assignment thereof, the fixing of standard rates of pay and hours of labor. The provision of means whereby the workers would be enabled to profitably employ their time continuously for the period necessary to familiarize themselves with their prospective duties, the yard layout, the

rules made for their government, and so forth. The estimate includes the expense of training employees of the agencies to the extent necessary to enable them to carry on with a working knowledge of their duties and environment, if not with that efficiency and expertness, which long practice and actual experience alone can give. The estimate has been built up by considering each function of the work to be performed under an orderly program. The time and talent required have been estimated upon the basis of past experience and constructive work of like general nature. The time requirements have been evaluated at fee rates which are customarily charged for this kind of work. To that part of the estimate there has been added the estimated cost to the agencies of the time for which employees would be held for instruction and training in their respec- [fol. 946] tive tasks, salaries and wages being used according to averages obtaining in 1929. This estimate is in no particular different from numerous bids which I have been obliged to submit. I have made such a bid with respect to the cost of revamping and reconstructing and improving the storekeeping methods of the Pullman Company, which involved an organization employying several hundred men. The work was awarded to us and we employed a number of men on it for a period of approximately two years. A similar task was performed for the Cummings Car and Manufacturing Company. What I did in those cases, to which I have referred, was merely a counterpart of what I have attempted to do in this case here. The first phase of the estimate has to do with a preliminary survey. We have set up a working force, consisting theoretically of myself, my principal assistant, and two more of the men of the caliber of Mr. Linskey and my son. With this force I have contemplated how much time it would take and what it would cost to recreate what we have today. I figured it would take myself, for thirty days, and a man like Mr. Mudd for another 30 days. The second phase of the work would be the digestion of the results of this preliminary survey and analysis, and the evolving of a plan, and what we call a lay out. I would expect to spend 15 days of my time on that. After the second plan had been criticized and necessary changes made, I figured that this work would probably require about 60 man days, including 15 days of my own time.

[fol. 947] The fourth section of the undertaking would comprise the installation of the methods and the training of the employees who would operate these methods. The 118 yardmen and 171 salesmen and buyers would have to be instructed concerning the procedures they were to follow and observe in the conduct of the yard operations. If we could have these yardmen for 20 days after we had evolved our plan, we could communicate to these head yardmen the same information and impart to them the same familiarity with the yard lay out that they would ordinarily get by working in the yards for as long as two or three years. For the 66 assistant yardmen, we figured that 10 days would be required in which to acquaint them with what they needed to know about the yard locations. The salesmen involved would require ten days each to become acquainted with the general system to be employed in handling traffic through the yards. The time of the yardmen is figured at the rate of $137.41 per month and of the salesmen $248.31 per month.

The fifth section of the estimate, relative to the incidental expenditures for working the materials, my estimate of what it would cost to reproduce the methods which are presently in use, is $49,666, and 8 per cent return on that is $3,973.

(Whereupon the ruling upon introduction of Respondents' Exhibits 52 and 52-A was deferred.)

(Whereupon the witness was temporarily excused.)

[fol. 948] Mr. James B. Woodbury, a witness, called by the Respondents, after being duly sworn, testified as follows:

I am vice president of the R. J. Potts Advertising Company. I have been in the advertising business about twelve years. The nature of my business is placing with the newspapers, magazines, outdoor, directly and on radio, advertising for any form of business.

Cross-examination:

The reason so many radio firms quit advertising was that the sales volumes were not satisfactory to show a profit.

Recross-examination:

There are cases in which businesses and firms have made a success and flourished without carrying on advertising to any extent.

(Whereupon the witness was excused.)

J. Ed Farrar, a witness called by the Respondents, after being duly sworn, testified as follows:

I have been engaged in the livestock commission business for twenty six years. I am with the firm of Farrar, Davis & Campbell. I have been selling steers for about three years. Before that I sold butcher stuff. There are three cattle salesmen in the firm. Ed Kramer sells the butcher stuff, and H. S. Davis sells stock steers and fat steers. E. W. Goodson is our hog salesman. Mr. Kramer was a yardman before he became the butcher salesman. Mr. [fol. 949] Kramer came with us in 1910 and has been selling butcher stuff for six or seven years. Mr. Davis has been on the yards 25 years and our hog salesman has been with us 15 years selling hogs. Mr. Tice sells our sheep on a split commission basis. It takes several years to qualify as a salesman. My firm does not handle many so called "seconds," and it does not seek that business. They bring them to us and we try to sell them, or do sell them and just make out an account sale and check to put in the clearing house. There is no work in the office, but the scale tickets come up and there is no correspondence on the seconds. We do not always sell them.

I generally get to the yards about 6:30 in the morning. We assist in the sorting when we get down to the pens. There is more sorting now than there used to be when I first started to sell butcher cattle. It depends upon the condition of the market and the number of head which we have as to how soon we get through our selling operations. We had five loads of cattle today. The other two cattle salesmen are handling them. We try hard to sell out if we can the first day. We don't like to hold them over. Sometimes we are compelled to do so. Each salesman has to mark the tickets for the cattle they sold. We get out a market letter or circular. In this market letter, we try to give them the

condition of the market and the prospects for the coming week. We go to the country to visit our customers and to get business. I generally go the latter part of the week, [fol. 950] Thursday or Friday. We do not have so much work the latter part of the week. Farmers want to ship the first part of the week. We get lots of requests from customers to appraise their cattle, and we frequently make appraisals. It is an advantage to be acquainted with the cattle before they are shipped. We know how they have been fed and we can give the buyers that information.

We hire a man to bring our drive ins over from the drive in gate. We pay him 10 cents per head. I never have time to take a vacation myself. After cattle are brought over from the drive in gates, our men have to do as much work, I think, as they would on a straight load of cattle shipped in. The man who drives them over has a ticket for each bunch. He marks them with scissors and puts the mark on the ticket. We receive, sell and weigh them accordingly. He generally turns them in the alley and then we take care of them. Mr. Davis has his automobile and I have mine. We have no company automobile. We charge up the gas and oil that is used on a trip. I have never charged any depreciation on my automobile. We rent horses for our use.

The item of income from office facilities of $1200 was paid by J. D. McCormack for the use of our office. In operating our business we endeavor to hold down expenses on an economical basis. Mr. Goodson does his own yard work except for occasional extra help.

Cross-examination:

My firm is a corporation. We don't care to handle seconds [fol. 951] because there is not much in it, and quite often the traders would come up and fill our pens, and we want them for our customers. We advise shippers by letter as much as we can. I expect we see the majority of our cattle before they are shipped.

Redirect examination:

I believe that the rules of the Exchange are advantageous to the market. There are no freight charges or back feed charges to figure on seconds. There is no correspondence, telephoning, or wiring or sending out of market letters or

country work incident to handling seconds. On a day like today scale tickets will get into the office from 2 to 4 o'clock.

Redirect examination:

We pay the insurance company its charges when one of those tickets is received. None of that sort of work is done in connection with seconds.

Recross-examination:

Our firm deducts this insurance and turns it over to the agent for the Hartford Company. The truck driver generally turns this Hartford slip in where he carries insurance, and we just pay this insurance and take it out of the proceeds from the cattle or hogs, or whatever it may be. I think we send the insurance company a check most every day. We don't get anything out of the Hartford and the Hartford does not get anything out of us.

Whereupon the witness was excused.

[fol. 952] WILLIAM E. CURTIS, a witness called by the respondents, after being sworn, testified as follows:

I have been in the livestock commission business at Kansas City market for about forty years. I am doing business myself at present under the name of W. E. Curtis and Company. I was doing business under the same name in 1929. Prior to that I was a partner in the firm of Curtis and Wright for fifteen or sixteen years, and before that I was with Rice Brothers. I am selling fat steers now. I also sell stockers and I do some buying. It would take several years before a man is competent to sell livestock. To be a competent salesman a man must naturally be interested in livestock and know livestock.

He has to have considerable confidence in himself, together with judgment. Two bunches of cattle apparently alike in weight, color and conformation, will vary possibly two to four dollars a hundred in value. I think the price fixed on such steers has a greater effect upon other classes of cattle generally than prices established on some of the butcher grades.

It is two or three times harder now to sell fat cattle than it was ten or fifteen years ago. It is more of a peddling proposition. I aim to get to the office about a quarter to seven. I have a butcher salesman and a stocker and feeder and buyer. I have only one regular yard man. We pay so much a car to have our cattle brought over from the train and the drive in chutes. We pay 10 cents a head on the [fol. 953] cattle and five cents on the hogs. I have a regular hog salesman. I did not have in 1929. In 1929 we paid Mr. Dyas so much per car to sell our hogs. I have hired him regularly now. I paid him $5 a car for selling hogs.

I spend some time in the country in the latter part of the week. We have practically nothing to do on Friday and Saturday at the yards. My business fluctuates just about the same as it does for the whole market as is shown by Respondents' Exhibit No. 5.

I believe my trips to the country are of an advantage to my customers. They are at a loss to know what their cattle are worth on the market since the market was continually changing and fluctuating. When I first became established in the commission business, there was not the spread between poorer and better grades of cattle which has existed in recent years. The value of appraisal work was not near as great then as it is now. Within the spread that exists now the relative position of the different classes of cattle changes frequently as to the price. That has increased our work in the country. Without the Exchange I do not know how the business would be handled so that the patrons to the market could receive the value of their stock. I had a loss of $76.93 on a purchase which was a carload of cattle which I bought for a man and for some reason he could not take them. I had to sell them at a loss. He was a good customer and ships us lots of stock but he refused to take them and I [fol. 954] had to stand the loss. Complaints about commission charges are usually from buyers from whom we are charging a commission rather than from sellers. You have to have a greater demand for any product and you have to have buyers to take care of these supplies. We advertise and send these letters, market reports, to all Eastern points. We try to have them come to this market to buy them. If we did not encourage the stocker and feeder business we would not have very much of a market here.

Cross-examination:

I did not take any action to collect the money which I lost on the purchase of livestock which was refused, he really ships us a good deal of stock in a year and I really did not think I could afford to fall out. He probably bought eight or ten loads in 1929.

I have seen variations of 10 cents to 75 cents among the salesmen in connection with cattle coming out of the same feed lot. There is a trading margin. I possibly see fifty per cent of my customers in a year. I visit those who make inquiry or make a request for me. My visits are confined absolutely to my rail business. I can visit any where from five to eight customers in a day. Other commission firms visit a lot of these same customers. The customer wants all the free advice he can get. Each firm is naturally after the business, and a great per cent of the customers encourage you to come and they ship to whom they please. I think there should be some form of regulation at the stockyards.

[fol. 955] Whereupon the witness was excused.

(Whereupon Government's Exhibit No. 27 was received in evidence with the understanding that if the livestock figures for 1930 obtained by the Census Bureau were available before this case is argued, they would be included as supplementary Exhibit No. 27-A.)

(Whereupon Government's Exhibit No. 28 was received in evidence.)

(Whereupon a letter, dated December 22, 1930, addressed W. B. Osborn, Manager of the Hartford Fire Insurance Company, was physically attached to Respondents' Exhibit No. 31, and made a part thereof.)

R. H. Lewis, a witness called by the Respondents, after being sworn, testified as follows:

I am a partner with F. H. Flournoy in the firm of Lewis & Flournoy Commission Company. I have been interested in the business about twelve years, and previous to that I worked as employee for about six years. Mr. Flournoy has been in the livestock commission business around thirty-five years. I am a member of the Exchange and was presi-

dent in 1926 and 1927. I would say that our firm handles a small amount of business. I would say that we handle more hogs and cattle a good deal than we do sheep. I began as a bookkeeper and handled a good many loans and then I began work in the yards. I started to sell hogs [fol. 956] about 1918 and sold them about three years. There is just three of us connected with the present firm and we just do whatever we are called upon to do. If we have more hogs than we do cattle, I work in the hog yards. If we have more cattle than hogs, I will work in the cattle yards. I sell both hogs and cattle and also buy a good many cattle. I have done order buying for packers. I buy for the Hy-Grade Pure Food Corporation at Topeka. I would say this corporation buys about as many cattle on the market at Kansas City as it formerly did. I think they are buying more hogs now at the Kansas City market. I do not handle their hog purchases. I never knew of their buying many hogs until just recently. In 1929 we had an employed hog salesman. His name was R. C. Dyas. We did not take up his full time and other firms employed him to sell their hogs. Mr. Flournoy works either in the hog yards or the cattle yards. He has had experience as a hog salesman but he spends most of his time in the cattle yards. I was with the firm of Elmore, Cooper & Ryan before I became interested in my present business.

The Hy-Grade Packing Company has purchased livestock direct. They purchase nearly all their hogs direct. I quit sending out circulars about two or three years ago. I think I bought about $14 worth of bullet pencils. The market paper has been discontinued. The item of $311 for entertainment was just for taking the fellows up town and buying them suppers and taking them to shows. A good deal of it was in connection with the buying business and [fol. 957] some of it in connection with the selling business.

I go into the country on week ends. We cannot leave during the first part of the week on account of the work. Two weeks ago I had a message to come out and look at a man's cattle and tell him what I thought they would bring and how he should sort them. I spent two days out there in visiting three or four men. While I was there I would help to sort the cattle. Last year I made one trip to Nebraska which you would call a soliciting trip. The rest of them I believe I would be safe in saying were made upon

request. I average two trips a month up to Topeka. I write a good many personal letters to my customers. I use a horse just as little as I can because it costs $2.00 a day. The business has not been profitable in the last two years. Mr. Flournoy draws $3300 and I draw $3600. Up to two years ago I employed a regular yardman and bookkeeper. Now, we sell them, weigh them ourselves, do our own yard work, with the exception of bringing them up from the trains to the pens, or from the north gate to our pens, and my son and I do all the book work. My son sells the calves and part of the butcher stuff.

Direct buying has affected my business. In western Kansas I used to have a location from which I usually received anywhere from 3 to 5 cars of hogs on Monday, and now I don't remember of getting a load from there the last two years. They all go to Cudahy and Dold at Wichita. The country buyer is buying for the packers. Our customers would ask us to call Mistletoe yards and find out what their hogs are bringing. I know the men who do [fol. 958] the marking would stay over in the hog yards until about noon. The man who marks the hogs was hanging around my pens a good deal. I could not meet this competition because the man at the private yards has the chance to mark his hogs last, and there is nothing to stop him from marking them higher.

I get down at the yards from 5:45 to 6:30 four days a week. Mr. Flournoy gets down about 7 o'clock, and my son gets down a little while before I do. Last night I left the yards at twenty minutes to 8 and the night before at 7:30. That is the way it runs for the first four days of the week for about nine months of the year. In 1929, I suffered an operating loss of $1800. I have endeavored to run my business as economically as possible.

Cross-examination:

Mr. Dyas was with us about five years. The first three months he was with us he did not sell for anyone else. Our business would not permit us to keep him at the salary, and he started to sell hogs for another firm at $50 a month. We took $50 off his salary and permitted him to draw that $50 from the other firm. Business kept going down until we were paying him $50 a month for the last two years. We started him at $200 a month.

Redirect examination:

The item of $261.73 for extra yarding of cattle is the amount we spent for delivering cattle from the unloading chutes and from the drive-in chutes. We have a similar expense for delivering hogs. The charge for drive-in cattle [fol. 959] from the chutes is 50 cents a carload and $1.00 a carload if it is a mixed load of cattle and hogs. On drive-ins, we pay 5 cents a head for hogs and 10 cents a head for cattle, if for their delivery.

Redirect examination:

I believe that the rules and regulations of the Exchange are absolutely essential to the market.

(Whereupon the witness was excused.)

C. A. Stuart, a witness called by the Respondents, after being duly sworn, testified as follows:

I am engaged in the livestock commission business, and my business in 1929 was operated as an individual under the name of C. A. Stuart and Company. I have been in the livestock commission business since 1903. I was at Wichita for four years, and came to Kansas City in 1907. Before I went to Wichita I was engaged in buying and shipping livestock to market, and selling livestock in the country. I have been a member of the Kansas City Livestock Exchange ever since I have been here, and I am still a member of the Wichita Exchange. I manage the business and sell the steers principally. Since January 1, I have taken in a partner and we have more employees now than we had in 1929. I buy cattle. I have one employee who is engaged in buying and selling cattle also. Referring to Government Exhibit No. 14-25, I can give the duties of the various employees listed. No. 2 was a butcher salesman. No. 3 assists in selling butcher stuff and in selling calves. No. 4 assists in selling cattle and buying cattle. No. 5 was [fol. 960] a hog salesman. No. 6 was a cattle buyer. No. 7 is a yardman of the cattle yards. No. 8 was a yardman in the hog yards. No. 9 was office manager, and No. 10 was a stenographer. In the busy season we employ a couple of other yardmen, and stock that arrives during the night

up until six o'clock in the morning are yarded by parties that do night yard work. We pay them for yarding our cattle at night. We pay for having our cattle delivered from the drive in chutes. One of my regular yardmen is assigned to the duty of train running. We handle very few sheep. We did not handle as many hogs in 1929 as we did cattle. During the busy seasons we put out a weekly market letter, probably three months a year. At other times we put it out once or twice a month. We do not engage in newspaper advertising to any extent. We purchase pencils and novelties to a limited extent. We maintain contact with our customers through personal correspondence and going through the country to see their stock. We make frequent trips to the country for that purpose. We make trips by trains and by automobile. Our trips are always made in the latter part of the week. We do more traveling in the busy seasons of the year than we do in the slack seasons. When we go to the country we go to see our trade, see the cattle, and do some soliciting of the people who are not customers. We very often get requests to make these trips. I know the kind of cattle that a great many of my customers handle, how they feed them, pasture them, and the location they are in. When I [fol. 961] see them I am better able to advise them how to market them, and that is the advice they are generally seeking. I think a substantial percentage of my customers rely on my advice as to when to market their cattle. I bought an automobile in June, 1929, and drove it 26,000 miles by October of this year. The car is used practically all the time in my business. I do not charge all the expense of that car to my business. There is always some changing among the class of customers that are floating around from one place to another, but I do not find a great many changes in my regular customers. They appreciate my keeping in close contact with them and advising them. In the management of my business, I try to get it so that it will pay expenses, and see that I can make some money out of it. There is quite a good deal of detail work about hiring trained men that are competent to do the work. I have to work them in together and see that their work coordinates. I handle the financial affairs of my business. In the peak season of the year I have more money in the business than I do at the end, or at the be-

ginning of the year. In the busy season of the year when we are buying cattle it requires more capital, and rather than pay interest and exchange, I use some of my personal money. It is our policy to encourage all the buying we can, in order to create all the demand on the market that we can. The responsibility and work and expense essential in the handling of livestock at the Kansas City market has increased in the past ten or fifteen years. I think a [fol. 962] sound Exchange organization is very necessary from the standpoint of the patrons of the market. I would not want to do business here if there were no Exchange. It is an advantage to me as a salesman when I make a deal to know that it will stay closed. When trades or deals are made no memorandum is kept when we make them.

Cross-examination:

I do not think that there is a livestock exchange at the Fort Worth market at the present time. In saying that the responsibility has increased in the last ten years, I had in mind that the financial conditions have been bad, a larger percentage of the cattle that we handled were mortgaged, and we have taken a great many chances to lose money that we did not use to take. I do not tell my customers when they should ship their livestock, but I advise them when I think it is best for them to ship them. Our customers handle different classes of cattle, and they are anxious to get them on the best market, and when there is a demand for that class of cattle they may not always know when that time comes, and the man on the market is usually in the position to advise him better as to the time to ship. The information which he gets by radio, and newspapers, and other sources is a big help, but the radio does not give him the information in regard to his particular class of cattle. We cannot see all cattle, but if I have a customer that has 100 cattle, or 200 or 300 cattle, he usually wants me to see them some time during the pasturing and feeding season. Today I had a letter from a customer saying he had three loads of cattle on feed. He asked me [fol. 963] to see him the first time I was in that neighborhood so as to advise him about when he should market them. I know there are some who have representatives

of different firms come to their place and look at their livestock.

(Whereupon the witness was excused.)

JOSEPH E. INMAN, a witness called by the Respondents, after being duly sworn, testified as follows:

I am engaged in the Livestock commission business with the Inman-Hutton Commission Company, which is a corporation organized about twelve years ago. I commenced in the yards about 44 years ago in the capacity of a yard boy for the J. S. Campbell Commission Company. I was with them about six years, and after about four years they put me in the hog division selling hogs. My father and I then started in the business for ourselves. He sold the cattle and I sold the hogs. We have quite a good deal wider range in the prices than we had in those days. We used to sell good, corn fed steers at $3.75 to $4.50, and up to a nickel a pound; and the stocker and feeder kind would sell for about $2.00 less than the fat cattle, and when there is not any wider range in the various kinds of cattle it is not such a job to sell them. Now, the fat, killing grades of cattle are ranging in price from 6¢ a pound to 12½¢ a pound. We have everything here from a coon dog up to an export steer.

A Texas customer, about the first of December, asked [fol. 964] me to go to Sudan, Texas, to look over 500 cattle which he had on feed at a cotton mill. We went to look at the cattle and found that they had about three kinds of cattle in there. I told him in the first place that his cattle were not fat, that he would have to keep them longer and when he went to shipping these cattle to ship a couple of loads of the heaviest plainer cattle, one load of the light handy cattle and one load of the Mexicans at a time. I told him that he ought to keep them 30 or 40 days longer before he commenced shipping anything. He told me to write him every week in regard to his kind of cattle and tell him when to ship and what to ship. I commenced shipping three loads of those cattle for Monday's market three weeks ago. He has about 200 of them left and I wired him not to ship any more for a couple of weeks. Now, that is what they put up to you. They claim it is worth a lot

of money to them for you to see this stuff. The Drovers Telegram and the radio business do not give them any information on the kind of cattle they have and they are interested only in their kind of cattle. When I go out to see those cattle once, I can keep them in mind. Last year I rented grass in the blue steam country for between 8,000 and 9,000 cattle. I look after the cattle through the summer frequently to see that they have water and salt. I spend a good deal of time and money looking after them. Generally, when we get pasture for a man and the cattle are sold, we handle them on the market. We have to string them out and not get too many of one kind on the same [fol. 965] day. We have to follow the market from 8 o'clock in the morning until it finishes in the evening to see whether it closes higher or lower. Any time the market gets too bad or is overrun, we will check up on a shipment or two until the following week and give the market a chance to recuperate. The requests to look at cattle in the country are very frequent. In the early days in the commission business, we did not have to perform all this extra service. Twenty years ago, pasture was $5.00 or $6.00 a head for the season for aged cattle. Now, they are asking $11.00 per head for the best pasture. It is necessary for me to keep track of the title to that cattle which I handle. If I get any business from a fellow that I do not know I try to find out something about him before I give him his money. I have had some claims made against me on account of the alleged sale of mortgaged cattle. It costs more to get our help and to handle the business than it used to. I had a bookkeeper for seven months out of the year 1929 during the busy season. My son gets up the market letter himself and sends it out. I undertake to keep these expenses as low as possible. My son used his automobile on appraisal trips and pasture leasing until we bought one the first of last July. Only the gas was charged up to the business. We make quite a good many trips by rail. Those are the long trips like the trips to New Mexico. I always attend the Texas Cattlemen's Convention and the other conventions where I run on to some good bunches of cattle. About the first week in December, [fol. 966] a man who had shipped some stuff to me bought some cattle from me and the Producers Commission Association paid for them.

Cross-examination:

My firm does not loan any money. Sometimes I will pay a draft drawn against a load of cattle. 1929 was about the first year that we had lost money. The business was lighter and our expenses were heavier for that year's business. Since that time, we have cut down our salaries. I lost a little money in 1930. I had the organization to handle the 6,000 cattle which I did not get. I had my help and everything ready to handle it and had to make arrangements accordingly to start in with the year to take care of this business. In 1930 our office rent was changed from $142 to $48 a month. That was a reduction in our office space. I reduced our hog man, calf salesman and my son $25 a month each, and myself $50 a month. My hog man and the stenographer kept the books the first six months. On account of the drought, I have been knocked out of the feeder buying business down in Missouri where I was raised.

Redirect examination:

Prior to 1929, I made money right along and I had been drawing more money out of the business prior to that time. I quit a salary of $7,500 to go into business.

Recross-examination:

The reason I made money prior to 1929 was that I did more business.

[fol. 967] (Whereupon the witness was excused.)

J. W. ROBERTS, a witness, who had previously been sworn and had testified, resumed the stand, and testified as follows:

Respondents' Exhibit No. 53 is a bound volume which contains certain sections identified by the letters A to Q, both inclusive. They consist of a statistical study relating to the unit cost of service rendered by the 65 Kansas City Livestock agencies during the calendar year 1929. Section A is a recapitulation of gross commissions earned under prevailing tariffs, and the gross value of calculable sacrifices made in rendering public service as livestock commission

agencies, showing the net results of operation. Section B is a summary of the calculated unit costs on a per head basis, single deck in carlot basis, by species, by selling service arrival accounts, and by buying accounts for each firm, and also the market average. Schedule "C" of this Exhibit which is indexed as section 3, consists of 66 sheets showing detail of the cost in the case of each agency. Sections D to E, both inclusive, comprise the supporting detail which underlie schedule C and section C. There has been included in this Exhibit as an integral part thereof those papers which have heretofore been introduced as Respondents' Exhibits 49 to 52, inclusive. The foundation for this study may be understood to be Government Exhibits 14 and 15. To the facts set forth in those exhibits there have been [fol. 968] made certain additions and some different interpretation of the data has been observed in compiling these figures than was observed by the Government witnesses. In this Exhibit, I have set forth the unit costs of rendering the services to the three different major species and according to six different service accounts, which are observed in the prevailing tariffs. That is to say, as regards rail shipments, the straight carloads of single ownership, the straight carloads of plural ownership, the mixed carloads of single ownership, the mixed carloads of plural ownership, and the drive ins and the seconds. The buying service has been dealt with as an entity, as it relates to the three different species. The necessity of combining the cattle and calves headage in one classification, classed for the reclassification of mixed carloads of cattle and calves into the category of straight carloads of cattle and calves, the principal difference in the figures which underlie this study from those set forth in Government Exhibits 14 and 15 have been set out in the various section- of this Exhibit. In the main, they consist of differences between the compensation of owners and joint owners, the development of the cost which would ensue, if certain predictable and insurable hazards were fully covered and the amount calculated equivalent to 8 per cent annual return on all items of invested capital as previously described in Respondents' Exhibit No. 52. The fourth item constituting one of the main items of principal difference has to do with the ad- [fol. 969] justment of depreciation on depreciable property

on the basis of the estimated reproduction cost new. Another change has to do with the expense classified in Government Exhibit 15 as selling service and soliciting expense. This account has been cleared by transferring the items to other classifications. The business getting and maintaining expense has been separated into two elements which are referred to as A on the one hand and element B on the other hand. Element A has to do with the general effort of developing new business or maintaining attached business, and element B includes those items of expense which represent effort directed specifically towards certain classes of business. Country buying and selling have been disassociated from the activities of the market, since it is an unregulated activity. It has not been possible to obtain all the facts which should be considered regarding the attendant expense in cost of earning these commissions. There has been set aside and treated as extraneous to the market activities an apportionment of the salesmen and buyers' salaries on a deck load basis, as shown on subschedule 5-A of this Exhibit.

The time study was the means which experience suggested as the best way to provide the bases for the distribution of joint expenses, and it has been used to break down the joint expenses. Two differ-nt sets of factors have been used. One set of factors represents the number of man minutes per head, which is the experience of salesmen, and another set of man minutes per head of figures relate to the experience of yardmen. During the time study period [fol. 970] of two weeks, an accurate account was kept of the number of head of each species arriving in mixed and straight carlot shipments which were of single and plural ownerships, respectively. These percentages have been used to divide straight carloads between straight and plural ownership, and mixed carloads between single and plural ownership. That procedure assumes that the average experience of this two weeks period would obtain throughout the year.

The selection of these bases must be primarily a matter of judgment, and their propriety is probably no better than the quality of the judgment exercised in selecting them. Distribution of the labor expense has been made upon the basis of the number of head handled, weighted according to the man minutes required per head in handling them for the different classes of employees.

It is my opinion that costs determined for the purpose of considering the reasonableness of rates for services to which the costs relate need to be not actual costs but rather typical costs, or we might say average costs. I believe that typicality of cost is of far greater importance and of far greater help to the rate maker than minute accuracy in the costs.

Element B of the business getting and maintenance expenses, shown under Section K, and covered by Schedule No. 8, comprises expenditures on account of appraisal trips, soliciting, and travel. Witnesses have testified that this expense is incurred with the specific object of influencing the procurement of straight carload shipments.

[fol. 971] From the records of the Secretary of the Livestock Exchange we obtained the number of days spent in the country by each individual who registered as having spent time in the country. There are areas which are regarded as open territory, in which workers on the Exchange spend time where it is not necessary that they should register. By the identity of the men we ascertain the proportion of the time charged to each species, and the days were classified accordingly. The per cent of the total number of days chargeable to each account was calculated and these percentages were applied to the element B and thus distributed to the species. It was then charged directly to the straight carload accounts. The element A has been distributed on the basis of the number of deck loads.

Schedule No. 9, which is indexed under Section L of Exhibit 53, shows the basis of distributing to the various accounts, the expense represented by country insurance accruals, except additional accruals for fire insurance which is distributed on the same basis, and on the draft basis the same as office expenses. Other accruals have been spread over the service accounts on a deck lot basis.

Schedule No. 14, indexed under Schedule 2 of this Exhibit, relates to the distribution of the equivalent of an eight per cent per annum return on invested capital. It is distributed on the basis of the equivalent deck lots. Where distributions have been made to the service accounts, the dis-

[fol. 972] tribution of single ownerships and plural ownerships have been made upon the basis of the experience developed by the time study.

In this instance the compensation of workers constitute sixty six per cent of the aggregate cost for the market as a

whole. The agencies at Kansas City have not kept what may be called a payroll distribution. In those cases where there was no buying expense in connection with the buying volume, we consulted with respective firms and obtained such information as to what the condition was that prevailed in 1929, and undertook to make a reconciliation of those difference- and to dispose of the discordances.

As respects to aggregate costs for all species and all accounts, as set out on Schedule A of this exhibit, it is to be noted that the efficiency in the commissions earned during 1929 was the equivalent of 14.19 per cent, that is to say, a deficit of $375,004 on the market as a whole for the sixty five firms, is 14.19 per cent of the gross volume of $2,267,-779. There are certain additional elements of sacrifice involved of risks and hazards sustained, which ought to be comprehended in some fashion or another, but which it is not possible for me to evaluate on a cost basis.

In the inventory of items there is nothing provided to take care of emergency expenses, such as an intensive campaign to meet competition which might threaten the existence of the business. There is no provision made to meet [fol. 973] increased wage demands which might suddenly arise. There is no provision for decrease in volume. We have not undertaken to include an estimate of the value of the patronage which is attached to the respective firms, and constitutes the back log of their business. Had the commissions been 114.19 per cent of what they actually were, the commission then would have equaled the cost exactly.

There is a variation in unit cost in almost every case. My experience has been that it is very rare where you find unit costs in the case of any two different enterprises where there are close together, in the case of each firm we dealt with, the total volume and the total computed cost as respects each of the cost accounts. The figure that is shown as an average for the market, is really a weighted average. (Witness give- the variation in unit cost with respect to various localities in certain territories).

The composite unit cost, which is the basis of the general scale of rates in a given rate scale territory, is arrived at in the same manner as I have used in developing the average market figures in this exhibit. (Witness continues to give statistics with respect to variations in parts of handling freight by railroads.)

Railroads are affected by the peaks and valleys encountered in their operations. In their case, however there [fol. 974] is one other factor which is also of great importance, coupled with the volume or density of traffic, and that is the average length of haul. In the commission agency business we have something akin to that with respect to the number of animals that are handled in consignments. The time and expense of the train runner is a fixed expense, just like the terminal service cost on a railroad, and must be covered. As between the various carriers in the same rate scale territory, there is a difference in the density in respect to individual commodities or classifications of commodities carried.

In the case of railroad transportation, the cost of transporting a ton is the same, providing the train service used is the same, and the kind of equipment is the same and the loading is the same. It is the customary practice before the Interstate Commerce Commission to present evidence with respect to the rates in a given territory, and concurrently there is also submitted statistics and facts bearing upon each individual road. The commission in its decisions has said that it is not the lowest cost, or the highest cost, that should be taken. It has also been said that rates should not be fixed with respect to years of prosperity nor to years of adverse conditions. You first have to prove up your year before you proceed to use it as a test year.

Exhibit No. 53 was prepared upon the same principles and after the same style as Exhibits designed to serve a [fol. 975] similar purpose would be built up if they were to be presented before the Interstate Commerce Commission or before any State regulatory commission. The purpose is to throw some light upon the cost of services as nearly as can be approached to which the present tariff of rates applies. There are a number of individual agencies, some of which are large operators, some medium sized operators and some small operators, some are corporations, some are partnerships and some are individually owned. Some handle all three species, some only one species, but they are all laboring under the same tariff. In my reasoning about the case, I could not distinguish any difference in this case from what I should do in the case of a railroad or group of light companies which serve the community and were in the same service group. I treated with these agencies individually first and co incidentally, collectively,

with the idea that the only available basis and the only proper basis for considering the just and reasonable cost of service rendered on this market would be to take the weighted average experience of the market providing the same general schedule of rates is applicable to all operators. I considered and I suppose it is no doubt true that a schedule of tariff rates that would be compensatory to some of the operators would probably be non compensatory to some of the others. I am inclined to believe that a schedule of rates which would be just and reasonable as respects the typical operator on the market, which is to say one having a weighted average cost, would probably, in one of [fol. 976] two instances, possibly be unduly compensatory, and on the other extreme there are unquestionably some instances where rates applied on that basis would probably be confiscatory due to the fact that the operators have very light volume and expenses on a unit basis are perhaps unduly high. That is almost an inevitable consequence in dealing with such a situation. It is one of the problems that confronts the rate maker. It was a very serious problem in the case of steam railroads. It does not necessarily follow that the cost of earnings of any individual operator, whether it be a livestock commission agency or railroad serving a rate scale territory, shows better net earnings than the showing of the average roads in the territory or of the average showing of all roads that the rates are for that reason unreasonable, as in the case of railroads, so in the case of these market agencies there are varying degrees of efficiency displayed in the conduct of operations, and it would be rather strange if there were not individual instances where the net earnings showing was relatively very favorable as against the market average and other instances where they were decidedly unfavorable. Therefore, I set this Exhibit 53 up after this fashion, because there was nothing else to do. It is perfectly absurd to think that there was any other basis upon which the facts presented could be presented in an intelligible fashion. As respects typicality you have got to consider enough experiences, happening co-incidentally, or at the epochal time to give you what we might term an average, and in this [fol. 977] particular case I do not believe that it would be possible to pick out any one of the 65 agencies involved and prove that it was what might be said to be a typical agency, because I am quite sure from comparisons that I

have made that you would find that in one or more important particulars, there were differences in the experiences of that firm from the experiences of every other firm. We were up against that problem when we launched this matter of a time study. The different firms occupied pen allotments in different parts of the yards, located at varying distances from the unloading docks and drive in gates. They have employees differing in their productive efficiency. They handle different sorts of livestock and as to species it varies in quantity. It seems to me that to use any other device than the average experience to establish a typical experience would be strictly arbitrary. It seems to me that the sensible, safe, reasonable thing to do would be to take the entire experience of the whole market. My experience in rate making for public utilities other than steam railroads is not very broad. I have never seen costs set up before the Interstate Commerce Commission affect the carriers in which the cost has been determined upon a basis of the productive capacity as 100 per cent ratio. It is quite obvious that it has never been done, otherwise rates would not be at the level they are today. It is a matter of public record that the executives of eastern railroads have made the declaration within the last year or two that without any [fol. 978] substantial changes in their physical plant they had a capacity that they estimated would be adequate for the next 50 years. Rates are not made with a view to what the roads might possibly be able to handle if they were able to utilize their normal operating capacity. The evidence presented for consideration in connection with making rates considers a normal currently prevailing volume of traffic that these roads handle. Traffic density is one of the first things that is set up and it goes back over a period of four or five years. (Witness gives the figures from an exhibit showing unit costs on class 1 railroads in the United States for the year 1929.)

Railroad rates as now effective are generally conceived to be on an unscientific basis. That is to say they were not made in such a way as to bear a close relationship to the actual cost of service in each case. The value of the services to the user in the case of a particular commodity or the ability of the particular commodity or traffic to bear the load has played a part in the determination of the altitude of the individual rates for differentiated services rendered by railroads. It would be absurd to build up a typical

cost showing with respect to railroads or other providers of public service the cost factor of one as applied to a given service, the cost factor of another as applied to another service, and then building up, in a composite manner, a unit cost showing.

Taking a typical experience as to cost or a typical basis [fol. 979] might result in a confiscatory rate or an unduly compensatory rate. It was discovered in the course of our examination that there were a number of instances where automobiles, which were owned by the partners or individual owner, have been used in connection with the business for making country trips, and no expense for operating these automobiles, or for depreciation upon them had been included in the books of account. How much of a charge should be made, or how much of an expense that was sustained that was properly chargeable against the business was difficult to obtain, so we covered substantially the same tracks that Mr. Bachmann had made, and did what he did with regard to these figures. Where risks or hazards were of unpredictable nature, or where they were not coverable by insurance, there has been no provision for an item of expenses made in such cases. We covered all the insurable hazards which we knew to be insurable by the prevailing rates of insurance, except one. That one instance relates to the protection which is available against losses arising by reason of failure of banks. It was my understanding that none of that business represented by livestock purchased on order and shipped out of the market is protected by bond, although I believe there is an instance or two where small packers in Topeka have bonds guaranteeing the purchasing price.

Cross-examination:

When I commenced this work at Kansas City, I wrote to a representative in Washington and asked him to obtain [fol. 980] information from the various offices which might yield some information bearing upon the marketing situation, and particularly as it related to the different, principal, terminal markets. He sent me a considerable number of pamphlets, booklets, bulletins, and various other publications. We wrote letters to various universities throughout the country which were shown to have made marketing studies of livestock. I also obtained two volumes of the 1927

proceedings called "American Cooperation." We also called upon the Packers Research Bureau at Chicago. I had never studied the marketing situation, and was seeking by this means to obtain a background of information. Some of these documents dealt with the marketing problem from an economic standpoint. One of the things I wanted to find out was the relative position occupied by Kansas City as a market compared with some of the other terminal markets. I had considerable difficulty in developing statistics as to the relative volume handled over a period of years. We got some facts, but the picture was not established in such a way that I felt that it was informative to me, or would be helpful to anybody else. The cooperative end of this marketing problem has received more publicity, and has been the subject of more writings than any other phase of it. I knew that it had not been an established practice to determine the unit cost of handling livestock on terminal markets from talks that I had had with operators on this market. A general plan of procedure was outlined on a theoretical basis on my first visit to Kansas City, [fol. 981] and the thing I was watching out for on it then was that some new development or some new situation was encountered of which I had not been informed. The materials which I referred to in my statement on page 5845 of the record as being material which I had used in determining whether I should go ahead with the work were some figures that we had gathered in a preliminary way. Later we attempted to get them in a more complete form regarding the relativity of commission charges assessed for handling of livestock and the handling of other agricultural products where it was evident that the expense of handling was much less, and perhaps the value of service no greater than in the case of livestock. I happen to know that commission men handling fresh fruits and vegetables on large terminal markets were reputed to charge 10% of the sales price as their commission. It occurred to me at the start that if livestock commission rates are of the same general level as commission rates charged for these fruits and vegetables it would be a futile thing to undertake to justify those rates by a showing of service costs alone. I had the impression that hay merchants charged about 10% commission for selling hay, and all that they had to do was just simply find a buyer for it. I had the information that livestock commission rates were equivalent to about 1%, or even

less of the sales value of the stock that was handled. It happened that a great deal of material was gathered that had no direct relation to our problem. The reason why [fol. 982] such information as I gathered with respect to commission charges on other commodies was left out was because it was not directly comparative, or because, if it was comparative, it seemed to be on the very outskirts of the things that the Secretary will probably care to give consideration to. It probably would be germane to the issues of this case, and helpful, if the information could be set up on a base broad enough to be certain that it was representative. I would not want to make comparisons of that kind, or would not regard them of any value unless there was some comparability of the underlying conditions. I did spend some time in the yards, and I made a study of the livestock commission business. I was here during the latter part of July, and I was also here on one or two occasions, and for two or three days on each visit during August. I observed the weighing of cattle, but I don't remember that I saw sheep and hogs being weighed. I paid particular attention to the jack pot weighing of cattle and calves. The nine firms which were the basis for the time study were selected soon after the 5th day of October. Certain firms were nominated as suitable candidates to participate in this study by the steering committee of the Livestock Exchange, and their eligibility was discussed by those members and Mr. Ashley and my son. Mr. Ashley and my son came for the specific purpose of supervising this time study. They had been informed about the general aspects of the work, about the forepart of July. They had given considerable thought, and we had many general discussions about the subject among ourselves. Mr. Ashley had spent some [fol. 983] time in the Chicago yards so that he would have a working knowledge of what was going on. I gave them a working memorandum of the points, or rather the bases that we desired to accomplish, and all the particulars that should be observed by way of making it as near representative as it could be made. I did not go into minute instructions, because it was not necessary. Mr. Ashley had had experience of that sort in other instances and knew what a time study was and how it was to be handled. In preparing the program for this time study I knew that the services of the commission agencies concerned consisted of purchasing and handling for sale three species of animals, the

various ways in which the species arrived that there were outbound shipments, that there were straight cars and mixed cars, that there were single ownerships and plural ownerships, the relative proportion of mixed and straight carloads, and the relative porportion of railroad receipts and drive in receipts; that each man's property had been handled separately that the animals had to be sorted and graded before they were sold, and that this work was done by salesmen and yardmen. I learned that there were certain things that had to be done in a rather careful and methodical way in handling livestock. I was not grossly ignorant of some of the things that naturally constitute a part of the responsibilities and duties of the agencies.

I had something to do with the preparation of Respondents' Exhibit No. 34. I stood up before a big blackboard [fol. 984] and put down the factors in the classification of sheep and lambs as they were called off, and the same with respect to hogs, cattle and calves. Then, those details were gone over with other individuals who checked over the information either as it appeared on the blackboard or as it was revised from time to time. I then set up the first page or sheet of Exhibit No. 34, showing the number of differentiations computed by progressive series of multiplication. These calculations were all checked by at least two people, but, notwithstanding, there may be some confusion in the result. In the case of Herefords, class A happens to be "grassers." It is my understanding that grassers come from Kansas, Oklahoma, Texas, Colorado and scattered other States. If that be true, then, the factor would be 5 instead of 14, as shown on page 1. Class B would be 6 instead of 14. Class C would be 3 instead of 14. That would make a material difference in the result. That was evidently an inadvertence. In some cases there have been duplication of States. In the case of sheep, as shown on the last sheet of the Exhibit, I am frank to say that there may be some confusion in the count although the astounding number of classes into which the figures run led me to have it checked over by at least two other people besides myself. I would like to sit down with this thing and go over it because I cannot quite bring myself to believe that it is actually true that there is a miscount of the number because of the work that was done in the effort to get it right in the first place. I am afraid there is a compounding [fol. 985] of these numbers in here. In Respondents' Ex-

hibit No. 29, 1,750,000 was given as the number of variations of grade and quality of livestock, affecting value when handling all species. He got that figure from Respondents' Exhibit No. 34.

I was looking at the matter from the standpoint of the market as a whole. I feel that the net revenue for the market as a whole is the test of the reasonableness of the prevailing rates, with one qualification. That qualification would be that I would presume that the agencies operating, whose collective experience was being considered, and whose net earnings were being used as a measure, were performing a public service that was necessitous and desirable, and should be protected, and I have assumed that that was the invariable case as respecting the agencies at Kansas City. It is upon that basis that I reached the figure which represents the aggregate cost as I have determined it in Respondents' Exhibit No. 53.

My conception of the situation is that the relationship between gross revenue on the one hand and aggregate cost of the services which earned that revenue, on the other hand, providing the latter figure could be completely stated, is not necessary and inevitably a gauge of the reasonableness of the rates.

They would necessarily indicate the adequacy of revenue to cover the cost and the degree of deficiency or excess as the case might be. As to whether gross revenue was a [fol. 986] product of rates that in themselves were just and reasonable would depend upon some other considerations. One of these considerations would be whether the volume of business handled during the particular year was a normal volume. Another consideration would be as to whether the quality of the operations which produced the aggregate cost were considered to be reasonably efficient and reasonably economically conducted, because I perceive that there might be such a situation that a deficit in net earnings might result from unskillful management, imprudent investments, or other transactions which had their effect upon costs. I believe in making just, fair and reasonable rates, that those matters must be given some attention. I would not say that they should be wholly ignored, and just take an arbitrary index, such as the difference between gross revenue and aggregate costs, as being in itself determinative of a condition of reasonableness or unreasonableness.

Admittedly, according to my way of thinking, there has got to be a judgment exercised which is well informed as to the equities which must be observed in the matter. It is my view that this matter of rates and volume are important from the standpoint of the market as a whole, and also the individuals or individual firms or agencies engaged in business on the market.

I think the altitude of the rates and the quantity of the volume are so closely related in their effect upon what might [fol: 987] be just and reasonable rates, that they must be considered together. Volume is very important to the individual agency. It may spell the difference between a profit and a loss on its operations, during any period, and the rate maker is obliged to consider the welfare of the whole group of service providers rather than to consider the welfare of each individual service provider.

In the Inter-Mountain rate cases, 234 U. S. 495, Supreme Court said, in substance, that the interests of all lines must be considered and not alone those lines that can handle the traffic with the least cost, and it would follow by the same line of reasoning that you should not consider the line that has the highest cost.

In another decision in 234 U. S. 476, it was stated that the necessities of weaker lines also must be taken into account. I do not believe it would be possible for anyone to fix a rate or a schedule of rates applicable to the operations of the agencies at Kansas City that would afford the same relative amount of net revenue in the case of each and every agency. One thought runs through my mind continuously is that which appears in Section 28 of the Interstate Commerce Act, where Congress laid down a mandate as to what the commission should do in attempting to provide adequate revenue for the railroads of the country, and it said that they should be established on levels that with due respect to prudent management, efficient operation, reasonable expenditures for maintenance of [fol. 988] roadway and equipment, which will yield the equivalent of a certain per cent of return on the fair value of the property as nearly as may be.

I do not consider that as an obligation upon the commission to fix rates that will in all cases, without exception, regardless of volume, efficiency and cost, yield a certain predetermined rate of return upon its investment. The

red line on Respondents' Exhibit No. 40, showing the gross revenue from the Kansas City Livestock commission rates, is drawn from the same information upon which the line shown on Respondents' Exhibit No. 44 was based.

Whereupon it was understood that either party could refer to Bulletin No. 491 of the Department of Labor for any material or explanatory information upon which Respondents' Exhibit No. 40 and other exhibits were based.

Referring to Respondents' Exhibit No. 41, the so called carrying capacity of a stock car is determined by the size of the journal. The super structure of the car is designed in accordance with the load carrying capacity of the journals. The dead load of the car is the starting point in calculating capacity. The capacity which I have given here in this Exhibit is what is called in railroad parlance of the "Rated Capacity." Stock cars are used for many other commodities than livestock. There is a possibility of getting thirty six tons of livestock in a stock car. I don't know whether it would be live stock or dead stock, but if you [fol. 989] could get it in there the car would carry it.

I had my office compile from the railway equipment register the average inside length of stock cars for the years 1929, 1925, 1922, and 1914 or 1915. It indicated that the increase in the capacity, expressed in tons was followed by an increase in the inside length of these cars in substantially the same ratio. I did not ascertain the average number of head of species of livestock per car coming to the Kansas City market, because I was fearful of the statistics that they would be misleading on account of the difference in the condition of the flesh of the animals being shipped to market. I am informed that the Santa Fe Railroad uses the forty foot car, but I cannot speak for the other roads. There has been a steady program of change on the Santa Fe since about 1920.

I stopped the red line on Respondents' Exhibit No. 41 at the year 1928, because I thought it was most unlikely that any consideration given to rates to prevail at the Kansas City market would have any influence extending beyond that year. I believe that Respondents' Exhibit No. 43 is significant in connection with the value of the service rendered to the user thereof. It does have significance as respects the value of the service obtaining on the Kansas

City market in the way of a realized net proceeds somewhat better than was generally experienced on the other ten markets. I would say that there would be variations attributable to freight rates through market conditions which would affect the amount deducted from shippers [fol. 990] proceeds. I would not say that it was necessarily true that because in a given year a percentage of one market is higher than the percentage of another market that the service is worth more to the first market than it is to the last.

(Whereupon the witness was temporarily excused.)

GEORGE W. HOBBS, a witness who had been sworn and had previously testified, returned to the stand and testified as follows:

Cross-examination:

There is not a very great turnover in the personnel of our firm. When we have to fill the places of those who leave the firm we try to get experienced help. That is especially true in the yards. The help is hired with the understanding that it will stay on the job until the work is done. The new cattle salesman which we employed January 1 has been on the market for 30 years, and he is a man with some following in the country. We pay him $7,500 per year. It is our opinion that service is the chief factor in the success of a commission firm.

Redirect examination:

I believe the compensation which I am paying to Arthur Little the new cattle salesman, is a reasonable compensation for the service he is rendering.

Recross-examination:

The following which Mr. Little had in the country was [fol. 991] not as much of a factor as his ability to sell cattle for customers in determining his salary. It was given consideration.

AL COFFMAN, a witness called by respondents, after being duly sworn, testified as follows:

I have been a livestock trader at the Kansas City Stock Yards since August, 1917. I have been president of the Traders Live Stock Exchange. The trader has been termed more or less a safety valve on the market, as the one that takes up and lets out the slack in the trade. He handles a large percent of the stocker and feeder cattle on the market. There are some traders that trade entirely in killing cattle, and other traders that trade in stockers and feeders alone. The ones that handle the stockers and feeders buy these cattle in most any sized lots, take them to their pens, and classify them. Practically all of the killing cattle are resold through commission firms, and once in a while there will be some stocker and feeder cattle planted and resold through commission hands. He can sell direct to the packer, but that does not happen very often.

I was president of the Traders Exchange at the time the so called market practice agreement was formulated. There was no agreement on the part of dealers or others on the yards in regard to trading or not trading with the Producers Commission Association. Mr. Woodman, of the Farmers Union Livestock Commission Co., agreed with me that the cooperative organizations should come under a set [fol. 992] of rules and regulations. That was worked out, and we have been trading with them just the same as we do with any other firm in the yards. There have been members of the Traders Exchange trading with all firms ever since any of them were in business at the Kansas City yards. I believe that the market practice agreement was advantageous to the cooperatives themselves as well as to those who dealt with them on the market. Before this agreement the cooperatives did not have any insurance protection.

Cross-examination:

In a commission man's alley there may be one shipment with some yearlings, 2's, and 3's, white face, red and black cattle. We buy from 1,000 to 1,500 cattle a day and sort them up.

Whereupon the witness was excused.

CHARLIE FORD, a witness, called by respondents, after being duly sworn, testified as follows:

I have been a livestock trader at the Kansas City Stock Yards since 1916. I have purchased livestock continuously from the Producers Commission Association since it has been on the market and I have never refused to deal with it. There has always been competition among traders in buying from the Producers. That competition increased after the bond was established.

(Whereupon the witness was excused.)

[fol. 993] Whereupon the respondents' Exhibit No. 54, the same being petition, answer, and decree in the District Court of the United States for the Western Division, Western District of Missouri, entitled Alexander, Conover & Martin Livestock Commission Company, et al., vs. United States of America in equity, Docket 538, was received in evidence.

R. A. WILLIS, a witness called by respondents, after being duly sworn, testified as follows:

I have been in the livestock commission business since 1904. I was connected with the firm of Stagner, Pieronnet & Willis. Mr. Stagner has been on the Kansas City Stock Yards since about 1900, and Mr. Pieronnet was in the business before Mr. Stagner, there on the market every day. I am a cattle salesman and have been selling cattle since 1907. I worked for the yard company for half a day, and then I went to work for a trader where I worked for three years, yarding, feeding, and watering cattle and cleaning pens. I have been on the yards since 1899. When I first went to work for a commission firm I ran trains yarding and feeding cattle and tended to the feeding. I have read Mr. Olander's testimony and my experience has been similar to his. My methods and practices are similar to those described in respondents' Exhibit No. 29. I started selling cattle 1908 and worked for the firm I am now with up to 1923. Then I went in as a member of the firm. The last four years I was employed by this firm I received $6,000 a [fol. 994] year. The personnel of the firm has not changed

in any way that would affect the efficiency, and we have endeavored in the operation of the firm to be economical in our expenditures. We do not expend a comparatively large amount of money for business getting or country soliciting. Mr. Pieronnet tends to all our correspondence and finances and takes care of the office. Mr. Stagner buys practically all of our cattle and assists me in selling cattle. I am one of the Board of Directors of the Exchange. In 1928 I made a little over half as a member of the firm as I did on salary. In 1929 I made less than half. Government Exhibit No. 14-29, which is the audit of our firm, shows that the greatest amount received by any owner out of the business in the year 1929 was $2,764.03. The condition of the business in the last two years has involved a restriction of my personal expenditures. I sold my membership in the Kansas City Club day before yesterday for $175, for which I had paid $875. Country buying has had a good deal to do with this reduced return in our business. I have worked harder the last two years than I used to work before when I made more money. It is our policy to keep our expenses as low as possible.

Cross-examination:

Livestock has been losing money for the men that handle it, and that makes it a hard fight to please him and get him out on his investment in the cattle. The overhead of the [fol. 995] business is so much more now than it was when I was getting a $6,000 salary. There was more livestock coming to market then than there is now and my firm handled more then.

Redirect examination:

I believe that some of the difficulty that we and others experience is due perhaps to the readjustment necessary to meet this period of declining receipts and increased competition in the business.

Redirect examination:

We have customers who have been shipping to us ever since I worked for this firm.

Whereupon the witness was excused.

LAURENCE E. TICE, a witness called by the Respondent, after being duly sworn testified as follows:

I am in the sheep livestock commission business under the name of Knight & Tice Sheep Commission Company. It was a partnership until four years ago when my partner died. I have been in the livestock commission business since 1924. Prior to that time I was a salesman for the W. M. Leitch Sheep Commission Company for 8 years. Prior to that I was a yardman for the Knollin Sheep Commission Company for 8 years. I have about 8 firms that I handle sheep for on the split commission basis. I eliminate all the office help, bookkeeping, telegrams and solicitation. There is absolutely no expense to it except in the yards. In my opinion the net return on the consignments handled [fol. 996] on a split commission basis is fully as much as on the business that comes direct to my firm. On our direct business we have the expense of telegrams, office work, and trips to the feed lots. The minute a man's sheep arrive at the feed yards we will either go out and look at the sheep or take him out to look at them. Sometimes we sort the sheep at the feed yards. We take wool buyers out there and we make no specific charge for these extra services. I get out a weekly circular which costs $17.50 a week besides the postage. At this time of year we send it to around 800. In the summertime when we are handling drive ins we send it to as many as 3200. I keep a mailing list which requires work to maintain. There is a constant effort required to keep these lists up to date. Sometimes the stockyard company puts the sheep in our pens but not always. When the sheep come down the incline the stockyards company will holler out the name of the commission firm to whom they are consigned. We catch these sheep and put them in our own pens, water them or feed them, if necessary, and if necessary sort them. Sometimes it is necessary to mouth them, that is look at each one's teeth to see whether it is a wether or a yearling. If there are ewes and lambs mixed, we always mouth them and sort out the ewes to see if they are young or suitable for breeding purposes. If they are old ewes they go to the killers. It takes a great deal of time to handle drive in sheep as compared to straight carlots. It is not always possible to tell the condition of flesh of a sheep by looking at it.

[fol. 997] We handle the drive in sheep more relatively per head than we do the straight consignments.

We have endeavored to keep our expenses of operation as low as possible. The first year we started my income was less than $200 a month. I was getting $250 a month when I quit Leitch. We showed a little increase in volume of sheep in 1930. I would say that the expenses of selling sheep is at least one third more now than it was 10 years ago. I was not in business for myself 10 years ago but I know it has been increasing since 1924. One reason our expenses are increasing is because we make more trips to the country. They are getting so they call on a commission man to go out in the country and look at one car of lambs to see whether they are ready to market. I lost a big customer through the Denver outfit of the Producers organization which is called the Inter Mountain Livestock Association. I have the word of my former customer that they entered into a contract to make a loan to require the consignment.

Cross-examination:

This customer seemed disappointed because he was required to send his sheep to the Producers organization at Kansas City under the terms of the contract by which he obtained this loan.

Mr. Knight and I had built up some business while we were with Leitch and we were able to draw considerable business which we formerly had when we formed a partnership in 1924. Mr. Knight's death affected our business in that we lost some customers which were personal friends of his. I have one other customer who I think obtained [fol. 998] money from the Producers because he is shipping his sheep to them. I have lost customers to other firms. Probably they were not satisfied with their sales or figure that the other fellow might do better. Other sheep firms attempt to get some of my customers away from me.

My stenographer and I do the work on the mailing list. We are doing that constantly. Every week we have several names come back from the Post Office where something has happened.

Whereupon the witness was excused.

J. W. ROBERTS, a witness called by Respondents, and who had previously testified, resumed the stand.

Cross-examination (continued):

The time cards used in connection with the preparation of Respondent's Exhibit No. 48 were prepared after Mr. Ashley and my son came here to the market. There was a memorandum written and handed to them upon their departure from Chicago, the general substance of which was that the object to be obtained by the time study was to show the time in minutes devoted to the performance of each functional element of the duties of yardmen, salesmen, and buyers, respectively, in the handling of the different species, by the different methods of arrival and according to whether they were single and plural ownership. It cautioned them against unessential details and suggested the practicability of having yardmen keep a memorandum record of the time [fol. 999] throughout the day. It also suggested that it would probably be impractical to require salesmen or order buyers to keep such a record. Mr. Ashley had made many time studies but not in the stockyards. The experience which my son had had would not have been of a great deal of assistance to him in this particular effort. Mr. Ashley had made time studies where he held a stop watch and had also done work of an analogous sort that would put him on notice of the discrepancies which might creep in to time reports that were kept by the workers. In such a time study as this there is a possibility that the men might be inclined to load certain accounts because of their mental attitude. A safeguard is directed against that by Mr. Ashley and my son by keeping in close touch with the operations. This gave them a sort of sense of propriety about the figures that they turned in. There were 84 men whose operations during this two weeks period were being observed and reported upon. These men were unaccustomed to keeping a detail record of their time. Their duties are various and their operations are frequently interrupted. The study was made during a time when the yard operations were quite heavy. It is just a little bit difficult to say that these time reports are perhaps as accurate as they might have been. If we had had different talent to work with or a different situation under which to work, it is our opinion

that the results were about as dependable as you could expect under the circumstances.

There was a meeting between my men and the members [fol. 1000] of the exchange committee and representatives from each of the nine firms who are participating in the time study. I know it to be a fact that each individual worker was talked with about the study. A representative from each firm saw to it that the men were supplied with cards and sheets that were used in recording their data, that the office turned in daily such information as was expected of it, and that the salesmen made their daily visits to give their information to my son. In the majority of cases the men in the office sent the man who had prepared the card directly to see my son about it. The salesmen and buyers reported to Mr. Ashley individually.

I am obliged to admit that my knowledge of the details at this late date is just a little bit inadequate. I do not recall how the time was handled in connection with the handling of jack pots. Undoubtedly a prorate was involved. I think a big majority of the salesmen reported from memory. This time study covers the duties and activities of every member of each of the nine firms regardless of whether he was an employee or an owner, providing they were salesmen, order buyers or yardmen.

In regard to "stand by" time, if a man had a task assigned to him and was in the act of performing it but met with some delay which he could not avoid, it was in that event not "stand-by" time. If he had no task assigned to him but was obliged to remain on duty, that was considered "stand by" time. The "stand by" time was classified and [fol. 1001] prorated over all of the productive time on a ratable basis. On page 5 of Exhibit No. 48 the "stand by" time is recorded in column "Y." There was not recorded to be any "stand by" time in the case of salesmen or order buyers. I think it is to be admitted that there is a question involved as to whether or not the experience gathered during the two week period would be fairly representative of that situation throughout the course of a year. There was a substantial difference in the amount of time required to fill orders due to the specifications that had to be made and the availability of the animals meeting those specifications. We made inquiry about the differences and we found that there was usually an exception. For example, the time

study showed that drive in sheep required an abnormally high time on a man minutes per head basis. This was not out of the ordinary when it was found that in the case of drive in sheep each animal has to be handled. Supervision over the time cards was exercised during the first week of the study by men who were in the yards all day looking at these cards when-ver they met a yardman. I will be glad to supply the list of questions which were asked of the salesmen when they reported in the evening. The time of the salesmen was charged against the particular sales transactions without regard to method of arrival or the character of the assignment. The time was then classified according to the name of the consignor. The account sales of these 9 firms were all analyzed for the two weeks period. [fol. 1002] There were only two of the firms where the account sales were completely analyzed. These firms were the National and John Clay. It was felt that as regards distribution of salesmen's and buyers' time that the experience of those three large firms, three medium sized firm-, two small firms and one firm specializing in the drive in traffic would perhaps be representative of the experience of the other 56 agencies operating on the market. Each firm's experience is peculiar to itself and the experience of each two weeks period throughout the year would be peculiar to itself. I reason to my satisfaction that the volume moving during the time study period as compared with other periods of the year would probably have little, if any, effect upon the ratios of differences in the unit time required to handle the different species by different modes of arrival. I think the difference in volume would probably reflect itself in a lesser or greater amount in "stand by" time or a lesser or greater amount of time charged to general yard work. I had access to the blue audits and with regard to certain firms we had their books which went back for a term of years. That investigation was not made for a certain purpose of determining whether these things were actual hazards. The reason that reasonably complete coverage of these hazards has not been carried by agencies at Kansas City has been due to inadequate gross revenue coupled somewhat with a lack of appreciation on the part of owners as to the significance of hazards which existed. It is my conception of the matter that there might be certain cir- [fol. 1003] cumstances under which animals might be dam-

aged or injured or their value impaired which would result in a claim being made against the commission agency from which it might later by the courts be absolved from responsibility but in defense of these cases there is always a substantial expenditure of money involved. I took into consideration that the site occupied by the Kansas City Stockyards was once inundated to the extent of six or eight feet. I had in mind that the yards are situated not far distant from the railroad yards where many thousands of carloads of gasoline and other high inflammable materials are transported annually. Those are the sorts of damages which it seemed to me were inherent in the situation and which I thought should be given consideration to as shown in Column D.

I am familiar with the fact that there is a blanket policy covering livestock on account of fire at the stockyards and that a separate charge is assessed against each consignment for that. It has occurred to me that in quoting rates for insurance in some of these hazards the insurance company might give considerable weight to the possible element of negligence of the commission firm. I made some inquiry with regard to the reason why only three firms paid fire insurance premium on furniture and fixtures during the year 1929. I was informed that it was a policy to curtail expenses and they felt that the hazard was such as to warrant them in carrying their own insurance.

Element B of the business getting and maintaining ex- [fol. 1004] pense shown on schedule 8 is distributed on the basis of time spent in the country. The method is predicated on the proposition that truck in and drive in business does not take any time of travel and soliciting. I do not think that would work out in each and every case. Under schedule 9 the distribution of insurance accruals as between single and plural ownership accounts was based upon the number of deckloads and number of drafts as disclosed by the time study. The time study experience was used throughout to separate the volume as between single and plural ownerships. On schedule 14-G the deckloads used as a basis for distribution were taken from Government Exhibit No. 15 adjusted to ease out the country selling and buying volume and to distribute the so called split volume on a ratable basis. As with respect to whether the float incident to selling and the float incident to buying should

have been classified separately it seemed to me that without having buyers on the market the sellers' interest would suffer in a very material way and on the other hand without having sellers on the market the buyers' interest would suffer. I used my own judgment and I believe that it is equitable.

Redirect examination:

Referring to chart No. 29 put out by the Department of Agriculture in September, 1929, entitled "Beef Cattle Outlook Charts" which purports to represent the number of head of cattle receipts at Kansas City in the years 1926 [fol. 1005] and 1927 and also chart No. 15 of the same publication which repres-nts the number of head of cattle receipts at Chicago monthly, I would expect that the greater fluc*ut*ation in the volume from month to month at Kansas City as compared with Chicago would cause the unit cost at Kansas City to be somewhat greater than at Chicago. The volume at Kansas City representing the average for two years varied from 110,000 head to slightly more than 280,000 head, whereas at Chicago the fluc*ut*ation was between 225,000 head and 300,000 head. The peak demands for working capital would come nearer being met by the requirements calculated on the theory that I have used here at Chicago than at Kansas City. Whereupon the publication referred to was received in evidence as Respondents Exhibit No. 55.

In cases that I have had experience with, the ebb and flow in the volume is not as sudden as it is here. Whereupon Respondents' Exhibit No. 56, the same being a graph and supporting data with regard to the marketing cost of agricultural commodities other than livestock at Kansas City, was received in evidence.

I was not satisfied that the experience shown by the figures in this exhibit covered a sufficiently long period to show a true test of cost. Respondents' Exhibit No. 40 shows that the gross revenue produced by the livestock commission rates at Kansas City during 1929 was on a lower level than the wholesale price of livestock and poultry, the wholesale [fol. 1006] price of meats, the livestock commission rates being at a level of about 146% of 1913, and the wholesale food meats at a level of approximately 182½% of 1913. The livestock commission rates were on a materially lower

level than the retail price of food meats which in 1929 were 186.3% of 1913 prices. Respondents' Exhibit No. 45 shows that the Kansas City livestock commission rates were on a substantially lower level in 1929 and in preceding years back as far as 1922 than farm wages and also on a lower level than the cost of living in the United States. I prepared the memorandum appearing in Respondents' Exhibit No. 32 and attached it to the papers which comprise that exhibit. I was not here when the committee met. I prepared the other data that appears on the individual sheets in mimeograph or typewritten form. The data on these mimeographed sheets as to years of experience of the workers were supplied by the various firms. The data as to the amount of business done, commissions earned, and value of sales and purchases were obtained from the 1929 annual reports.

Whereupon Respondents' Exhibit No. 18, the same being page 40 of technical bulletin No. 57, United States Department of Agriculture, was received in evidence, with the understanding that either party might refer to any other portion of that bulletin at any stage in the proceeding.

Whereupon Respondents' Exhibit No. 57, the same being pages 689 and 690 of a pamphlet entitled "Cooperative Marketing" was received in evidence.

[fol. 1007] Whereupon Respondents' Exhibit No. 48, the same being the time study, was received in evidence with the understanding that the time cards and the recap sheets would be available for use in argument or brief.

Whereupon Respondents' Exhibit No. 53, the same being the summary of the cost study of Mr. Roberts, was received in evidence.

Whereupon Respondents' Exhibit No. 52-A the same being affidavits with respect to the sale of memberships, was received in evidence.

(Motion of Respondents counsel for an adjournment of the hearing to Washington was denied.)

Recross-examination:

When I get a contract for a job I have to go ahead and organize my forces to do the work and complete the job before I get my compensation. Even if I did ask for a reasonable prepayment I would find it necessary to invest

some capital. The gross revenue of business does not show the efficiency of that business. If the facts show that during the year 1930 the three lines of Respondents' Exhibit No. 39 come much more nearly together, that fact would not in any way affect my opinion as to the accuracy of the figures.

For the past ten years my firm has appraised something more than two 2 billion dollars worth of property. That has been for different purposes. I have the opinion that [fol. 1008] if all the furniture and fixtures and equipment were put upon the market the price offered would be less than reproduction cost new less depreciation. The condition per cent was based upon its present status as regards its condition new considering the purpose for which it is presently used and for which there seems to be a prospective need.

(Whereupon the witness was excused.)

Government's Rebuttal Testimony

Counsel for the respondents having waived examination of the Government engineers to determine the condition per cent of the furniture and fixtures, Government Exhibit No. 30 was received in evidence.

Whereupon Government Exhibit No. 31, the same being a summary by firms of the valuation of the furniture and fixtures showing reproduction new value, condition per cent and reproduction new value less depreciation, was received in evidence.

Whereupon Respondents' Exhibit No. 58, the same being an inventory of prices used by Respondents in pricing inventory of furniture and fixtures was received in evidence.

J. J. BACHMANN, a witness called by the Government who had previously testified resumed the stand and testified as follows:

I have prepared an exhibit showing the number of head [fol. 1009] of the different species of livestock arriving at the Kansas City market on a per car basis for the years

1920 to 1930, inclusive. The information was taken from the records of the stockyard company as shown by the train office records. The note at the bottom of this exhibit shows how the cars were distributed. Inquiry was made as regards to car lengths. The C. B. & Q. Railroad and the Union Pacific Railroad have adopted the 36-foot car as standard equipment. The Santa Fe, Rock Island and Missouri Pacific have adopted the 40-foot car as standard equipment and are in the process of changing from the 36-foot car to the 40-foot car. At the present time the status of the Santa Fe was 30 per cent of their cars are of 36-foot length and 70 per cent are of 40-foot length. The Rock Island has 60 per cent of the 36-foot length and 40 per cent of the 40-foot length. The Missouri Pacific has 30 per cent of the 36-foot length and 70 per cent of the 40-foot length.

Whereupon the Government Exhibit No. 32 was received in evidence.

I have prepared an exhibit with respect to the float applicable to sales and purchases. I feel that if we are going to make a proper differential study that the purchases should get whatever expenses they cause and the sales should get the proportion which they cause.

Whereupon Government Exhibit No. 33 was received in evidence.

[fol. 1010] I have made a study of the actual losses of the respondent market agencies during the year 1929 covering all sources of losses as shown by their records and have prepared an exhibit which has been marked for identification as Government Exhibit No. 34. I stated in my direct examination that I had not taken the risk items as a whole into consideration in determining the per unit cost. I did state that they must be given consideration in determining the final tariff. I feel that no item is entitled to the designation of a "risk item" unless at some time or another it reduces itself to an actual cost or to a decrease in income. With the numerous transactions occurring for 65 firms in a year we have at least sufficient experience in this exhibit to determine those items which are continually occurring and which involve risks and which reduce themselves to cost. Under "Bad Debts" we have taken both the bad debts on commission business and on the firms which had

a loan business. I have included gains and losses in freight, yardage, trading, trucking and so on. I have included also gains and losses from handling the livestock for purchasers.

Whereupon Government Exhibit No. 34 was received in evidence.

I made an investigation with respect to the listing of furniture and fixtures and other assets by the Respondent market agencies for taxation purposes. I have prepared an exhibit which has been marked for identification as Government Exhibit No. 35. The exhibit is self explanatory.

[fol. 1011] Whereupon Government Exhibit No. 35 was received in evidence, it being understood and agreed that people generally in Missouri turn in under sworn statements their personal property for taxation, at less than actual value (this stipulation was made after counsel for Respondents and Examiner communicated with the officials of the Department of Agriculture in Washington).

I have made some further study of Mr. Roberts' Time study with a view to analyzing it by firms and have prepared an exhibit. There is no change whatsoever in Mr. Roberts' Figures except one statement is added; that is Exhibit N which compares the volume for the nine firms used in the time study for the years 1930 and 1929. The purpose of this exhibit is to show what has been included in the time study by firms and what has been averaged.

Whereupon Government Exhibit No. 36 was received in evidence.

Whereupon it was agreed that the Government would prepare the data giving the penal sum of the bonds carried by the respective market agencies for the year 1929 which should become a part of the record as Respondents' Exhibit No. 59.

(Whereupon the witness was excused.)

Whereupon the publication of "Crops and Markets" for the months of October, November, December and January were received in evidence as part of Government Exhibit No. 28.

Whereupon the hearing adjourned.

[fol. 1011½] **Abstract of Evidence at Rehearing**

(Offered at Hearing on Application for a Permanent Injunction)

[fol. 1012] ABSTRACT OF EVIDENCE OFFERED BY THE GOVERNMENT

Pursuant to the above order for rehearing a hearing therein specified began in Kansas City, Missouri, on October 6, 1932, before an Examiner of the Department of Agriculture. The Government and the respondents, with the exception of Thomas McDonald, Farmers Union Livestock Commission Company, W. H. Cripe, Producers Commission Association, K. L. Peterson and Company, Harry Conley and J. Ed. Freed were present by counsel. Those respondents not represented by counsel signed an acknowledgment of service of a copy of the order granting rehearing, and stipulated that such service should have the same effect as if served five days before the hearing which started October 6, 1932. Counsel for the Respondents renewed the motion made by him at the previous hearing requesting separate, several and independent hearings with respect to each of said respondents. The Examiner overruled the motion and ruled that the supplemental hearing would proceed along the lines of the original hearing.

MR. GLEN T. STEBBINS, a witness called by the Government, being first duly sworn, testified in substance as follows:

Direct examination:

The position I occupy with respect to the livestock indus-
[fol. 1013] try at Kansas City is that of Secretary of the Kansas City Livestock Exchange.

Government Exhibit No. 100

Government offered in evidence the original record made at the previous hearing and requested that the same be designated as Government Exhibit No. 100.

Government Exhibit No. 101

Government offered in evidence all tariffs of rates and charges which had been filed and made effective by market agencies at the Kansas City Stockyards since the original hearing in this docket. These tariffs were so offered in order to bring up to date the tariffs shown in the original Government Exhibit No. 1. This exhibit does not include the tariffs of certain order buyers and cooperative market agencies.

Government Exhibit No. 102

Government offered in evidence Government Exhibit No. 102, which was a certified copy of the tariffs filed by Harry Conley, W. H. Cripe, Feaman and Nolan, Graybill and Stephenson, Great Western Order Buying Company, and K. L. Peterson and Company.

Government Exhibit No. 103

Government offered in evidence Government Exhibit No. 103, a certified copy of Tariff No. 4 of the Farmers Union Livestock Commission Company, Kansas City, Missouri.

Government Exhibit No. 104

Government offered in evidence Government Exhibit No. 104, which was a copy of certain tariffs filed by the Pro-
[fol. 1014] ducers Commission Association at Kansas City market.

Government Exhibit No. 105

Government offered in evidence Government Exhibit No. 105, which was a certified copy of all tariffs of market agencies at those stockyards which had been filed since Government Exhibit No. 5 was prepared. This exhibit brings up to date Government Exhibit No. 5.

Direct examination:

I have been Secretary of the Kansas City Livestock Exchange since June 1, 1931. I went to work for the National Livestock Commission Company on August 30, 1909 and

worked for that company until I assumed the duties of my present office. The National Livestock Commission Company operates on the Kansas City Stockyards. I began as office boy and proceeded through most all phases of the business except the actual selling and buying of livestock on the market. I have acted in the capacity of a yardman but not in the capacity of a salesman. I have read the testimony of Mr. B. C. Biggerstaff as contained on pages 699 to 805 and pages 877 to 894 of the transcript of record in the previous hearing. My duties as Secretary of the Kansas City Livestock Exchange are the same as those of Mr. Biggerstaff. The present activities of the Exchange are substantially the same as those described by Mr. Biggerstaff in his testimony beginning December 11, 1930. In some respects his testimony is applicable to present conditions and in some respects it is not. On page 709 of the testimony of Mr. Biggerstaff the subject under discussion was assess-
[fol. 1015] ments on members of the Exchange engaged in the livestock commission business at the Kansas City Stockyards. There is one addition to those assessments as enumerated in the record. I will enumerate the assessments which are now made. The assessments now being levied on members of the Kansas City Livestock Exchange are as follows: for the agricultural development fund, ten cents per car on in-bound business, six cents per car on out-bound business; for the purpose of broadcasting market information by radio, five cents per car on all in-bound business, no assessment on out-bound business; for the purpose of reimbursing the Exchange for the expense incurred in the previous rate hearing an assessment is now being made of eight cents per car on in-bound business and five cents per car on out-bound business. This assessment is designed to proceed over a period of years until the association shall have been reimbursed for the expense incurred in the previous rate hearing. It is calculated that it will take perhaps six or seven years in which to liquidate that expense, to say nothing of the expense which will be incurred in this hearing. The other assessment being made, as set forth in the previous testimony, is two cents per car for a transportation fund on in-bound business. Broker members are assessed for the purpose of the agricultural development fund six cents per car on the amount of business handled by them, and for the purpose of the rate hearing

five cents per car. It is the purpose to continue these assessments until the Exchange has been reimbursed for the expenditure involved in this hearing. Those who were not [fol. 1016] parties in the previous hearing do not have this car assessment made against them. In speaking of inbound and out-bound business, that means livestock sold by members of the Exchange. On page 718 of the transcript of testimony some explanation is made of the use of the assessment for the purpose of the transportation fund. It might be well here to give some little further explanation. The two cents a car collected for the purpose of the transportation fund is paid by the commission firm and not by the shipper. These moneys are placed in a fund which is kept separate and intact from all other moneys collected by the association. Out of that fund is paid the expense of maintaining equitable freight rates to the Kansas City market in order that the shipper and the producer may have a free and unhampered movement to this market. On page 720 of the transcript the witness referred to an assessment against individual members of $3.00 for the purpose of a membership fund. In addition to the $3.00 there is now being assessed against each individual member $2.00 which is credited to the expense incurred by reason of the previous rate hearing. That assessment is in addition to the assessment made on a per car basis. On page 780 reference was made to the number of firms then in operation on the Kansas City market. There are now 49 established livestock commission firms at the Kansas City market. There are six firms doing business as livestock commission firms whose business is cleared or handled through one of the established commission firms. There are seven order [fol. 1017] buyer firms on the market and three firms engaged in the business of clearing livestock for yard traders. These are in addition to the two co-operative firms now in business at the market. Those who have their business cleared are the Henry F. Carnes Live Stock Commission Company, Link Fasken Live Stock Commission Company, Dave Hamer Commission Company, J. D. McCormick Live Stock Commission Company, Welch Live Stock Commission Company, and Jefferson, Lowry & Davis Live Stock Commission Company. On page 782 the witness referred to the number of members who were then associated with

the Kansas City Live Stock Exchange. There are now a total of 247 members associated with the Exchange, of whom 25 are inactive. Ten memberships have been retired since the testimony of this witness, or since December 31, 1930.

On page 877 of the transcript the witness referred to the influence of the hard surface roads upon the market. We have found as a matter of fact that good roads do not have a tendency to increase receipts at the market but have a tendency to increase the percentage of receipts which arrives at the market by truck rather than by rail. The result of this trend in transportation has been to break down the consignments into various numbers, more generally into smaller consignments, which naturally tends to increase the work in handling. We find that where it was first contemplated that good roads might tend to bring livestock to the market which had previously been going to other markets, these roads have been developed to such an extent that that is not now a fact. We find that distance is not a fac-
[fol. 1018] tor. We find that the receipts which we contemplated would come to this market as a result of good roads are again going to the St. Louis market by truck. There is another factor which the truck has brought into the picture and that is the influence of the truck driver in determining where the shipper will send his livestock. The truckman is not to any great extent under any legal regulation or supervision. As a consequence he becomes subject to bonuses or other inducements which might be held out to him to bring his livestock to certain points. As a result, they are brought into direct competition with the markets. This competition is not only from packers who are situated locally at the market, but from local packers scattered throughout the territory, small slaughtering plants, concentration points, and numerous little stockyards which have sprung up in the past two years. There has also come into the picture more predominately than has been the case previous to the last two or three years the community sale. These have had the tendency to create greater competition for the large public markets. The community sale is operated generally at a fairly well populated town or community where stockyards have been established for the purpose of loading and shipment of livestock. Perhaps once or twice or three times a week the producers in that particu-

lar territory or within a short-haul distance of that particular place bring their livestock in, where it is either sold at auction or individually. Some of the livestock is shipped out and some of it may go back into the same territory. That which is shipped out or carried beyond the immediate [fol. 1019] territory may go to a more distant community or to slaughtering plants at various points. I have never analyzed it to determine whether some of it comes to the public stockyards. Our territory for trucked-in livestock is bounded on the east perhaps by distances of 30 to 40 miles; on the north our territory is very limited because of the competition and drawing power of the St. Joseph market; on the south I should say our territory would extend perhaps 60 miles, at which point we would begin to get into territory which is now contributing very largely to the receipts at a little market down at Springfield, Missouri. Our territory south and east is now occupied by a small plant at Sedalia, Missouri, which has been in operation for some little time. Directly east of us there are several loading points where livestock is concentrated, more particularly hogs, for the St. Louis market and other points east. I noticed in the weekly Kansas City Star about two weeks ago that a large concentration point had been established at Chillicothe, Missouri, and out of that territory previous to now this market did draw considerable livestock. South and west of the market we get into territory which is now contributing to a very large extent to a little market at Joplin, Missouri. Swinging around from there in a northwesterly direction we get into the territory which contributes to receipts at the Wichita market, which would extend out from Kansas City some 150 miles. Going north and west, the territory perhaps from which trucked-in livestock might be received would extend likely to a point of 200 to 250 miles except for that territory lying within a [fol. 1020] short-haul distance of Salina, Kansas, where another small market is operated. Going on northward, trucks bring livestock into Kansas City from a point as far away as 300 miles, but lying within that territory is another concentration point at Manhattan. At Topeka, Kansas, there is now established the Morrell Packing Company, which receives both cattle and hogs direct. Swinging on northward, we get into the territory which contributes not only to the St. Joseph market, but to the Omaha market.

Included in that territory is Leavenworth, Kansas, where there is a packing plant. Generally speaking, I think we are receiving a greater percentage of our receipts by truck now than formerly. Our receipts have declined since 1929.

We have as a matter of record made three amendments to the rules and regulations of the Kansas City Livestock Exchange since the testimony in the previous hearing.

Government Exhibits Nos. 109-C, 109-D, and 109-E

Government offered in evidence Government Exhibits 109-C, 109-D, and 109-E, bringing up to date Government Exhibit No. 9, the rules and regulations of the Kansas City Livestock Exchange, which was put in evidence at the former hearing.

Cross-examination:

It has come to my knowledge that the Morrell Packing Company at Topeka is making direct purchases of cattle in [fol. 1021] this territory and have been doing that since taking over the plant formerly known as the Wold Packing Company. The rule of the Exchange which relates to tariffs or schedules of rates and charges has not been amended but has become inoperative, so to speak, due to the reason that all tariffs and schedules of charges at the Kansas City market are filed by the various market agencies separately and individually.

Redirect examination:

Formerly the tariff to be charged by members of the Exchange constituted one of the rules of the Exchange. A failure to charge that tariff constituted a violation of the rules. Each individual market agency as a member of the Exchange files its own tariff now. The Exchange makes no rule as to a tariff. The member is at liberty to file any rate that he sees fit. I do not believe that it would be a violation of the Exchange rules if a member would file a different rate from other members. I believe the tariffs now in effect and charged by the members of the Exchange are uniform with the exception that they are not all uniform as to buying. As to selling they are uniform. I know of no agreement or arrangement whereby they were made uniform. That is just a coincidence.

Whereupon the witness was excused.

MR. H. W. NICKEL, a witness called by the Government, being first duly sworn, testified in substance as follows:

Direct examination:

[fol. 1022] I am Superintendent of the Kansas City Stockyards and hold the position that was formerly held by Frank H. Betton. Mr. Betton retired on January 1, 1932. I have been Superintendent for the last five years. We had two at the time Mr. Betton retired. I came with the Kansas City Stockyards Company in October, 1920, as Assistant to the General Manager. I have read the testimony of Mr. Frank H. Betton as contained on pages 558 to 698 of the transcript of testimony taken at the previous hearing in this case. I have a change to make on page 577 of the transcript in regard to our truck-in sheep division. We have since increased the unloading facilities to nine trucks. On page 580 of the transcript, reference is made to the truck-in division where hogs are received. We have added facilities for one more truck. As far as the rest of the testimony is concerned, there has been no change in our physical operation. Since the time of the previous hearing, our truck receipts have greatly increased, which entailed increases in our expenses in handling. With these comments, Mr. Betton's testimony applies to present conditions.

Cross examination:

I have observed through our solicitors that development and increase in the competition from direct shipments of livestock to packers. It has made it harder to solicit business, in view of these new yards coming up. It has made it very difficult for us to get back some of the business which we formerly enjoyed and naturally close-by markets [fol. 1023] would draw a part of our receipts. In my judgment our receipts are diminished greatly, but as to the per cent I would not say. No definite arrangements have been made to alter the unloading facilities for hogs delivered by truck so as to place the unloading chutes closer to the pens in which the hogs are yarded. The yardage charges made by the Stockyards Company are calculated on a headage basis.

Redirect examination:

The solicitation of business by the Stockyard Company has been going on so long as I have had any memory of

the yards. As far as I know the various stockyards have been soliciting business and competing with one another in that respect during all that time.

Recross-examination:

I recall that a couple of years ago the commission firms discontinued sending out copies of the Drovers Telegram, which is a market paper. This refers to the respondents who are members of the Exchange. To my knowledge, they have not sent out free copies of that paper since then. It is my understanding that it was the judgment of the officials of the Stockyards Company that that change had an effect upon the volume of business at this market. I gathered that it was the opinion that it was an unwise move. It was my understanding that in the long run it was an economical expenditure of money for the purpose of increasing business at the market.

[fol. 1024] Redirect examination:

In speaking of those who regarded this as a wise expenditure I am referring to our people, the management of the Stockyards Company, and not the livestock commission men.

Whereupon the witness was excused.

Mr. J. C. Vance, a witness called by the Government, being first duly sworn, testified in substance as follows:

Direct examination:

I am office manager for John Clay and Company. I testified in the first hearing in this case, and hold the same position now as I held then. I have read my testimony taken at the former hearing as far as from page 962 to page 1083. I did not get through with it. The first change which I would call attention to is on page 1020 in regard to the vaulation of the services rendered by the partners, most of whom reside at Chicago. Since the former testimony, the Kansas City office has been charged and is being charged $1,000. a month for administrative salaries. That expense has never heretofore shown up on our books at Kansas City. I mean

that the Kansas City office is charged $1,000. a month by the head office in Chicago with administrative salaries. That is not to cover the salary or any part of the salary of anyone employed at the Kansas City office. That is entirely for salaries of partners and I think is the proper charge. The nature of the services of the partners rendered to the Kansas City office for which that charge is made is the furnishing of the necessary capital for us to [fol. 1025] conduct our business on. We consult them continually about different things and they direct the program and conduct of our office. I do not think they make any other charge for providing capital. We have a local manager here at the Kansas City office who has general charge of the conduct of this office. The management which the partners give is just the general direction of the general policies of the business. I think farther over in my testimony the amount of the capital furnished by the head office to this office is set out. I hardly think it would be so much now.

On page 1025 of the previous testimony reference is made to the provision of our mortgage for borrowers to ship to our firm, and in that former testimony I said that there was a provision in our mortgage for the purpose of saying where the cattle should be shipped. I find that the provision that I referred to is only in case where it is necessary for us to take possession of our security in order to safeguard our interests, and in that case our mortgage provides that mortgaged livestock may be shipped to us or to the open market and sold at public auction or private sale. That is only in case where we deem it necessary to go out and take possession of our security through some fault of the borrower. In other cases there is no restriction put on any of our mortgages by us. Of course, it is expected that the borrower will ship to John Clay.

On page 1046 I referred to the allowance of $2.00 per trip which we made to our employees who used their own cars in going back and forth to the Prospect and Morris [fol. 1026] Feed yards. Within the last year we have reduced that allowance to $1.50. I think that reduction was made the spring of this year. That was brought about because the concern from which we have arrangements to hire cars reduced its rates one cent a mile, so we just made a

different allowance on our employees who use their own cars.

We did not sustain any losses on account of bank failures during the depression.

On page 1070 of the former testimony some reference was made to the larger number of shipments requiring proration, that is, cooperative shipments. We are handling a great many more trucks now than ever before. Where they used to make up a neighborhood shipment and load in a car, a good many of these same people are now shipping by truck and coming in as individual shipments. Our own truck-in business has shown a steady increase in the number of all three species. In 1929 we sold a total of 17,900 head, in round numbers; in 1930 we sold 23,200; in 1931, 29,000, and so far this year we have sold 26,700, and still have three months to go. The increase in truck-in business is rather noticeable for the reason that the decrease in sheep receipts at the Kansas City market so far this year is between 14 and 15 per cent from last year. In the face of these decreased receipts of sheep we are showing an increase in our drive-in business every year for the past four years. We do not have to do any prorating in respect to truck shipments. The truck driver usually has a stip- [fol. 1027] ulated price of 20 cents a hundred, or whatever the price may be, and it is just a matter of multiplying the weight by the rate and charging the shipper with so much truck charges. We settle directly for the whole charge with the truckman as a rule. We either deliver a check to the truck driver or mail the consignor a check or deposit the proceeds in his designated bank. To a considerable extent with respect to truck shipments we deposit the proceeds to the credit of the shipper. During that period when so many banks were failing, we would have shippers who wanted cash for their proceeds or wanted to buy Kansas City bank cashier's checks. Perhaps they would want us to send their proceeds to some Postal Savings bank in their community. That involved some extra work and some extra expense because we have to pay a two-cent check tax on our own check and on the check which the bank issues for us. We do not have to pay the tax on the remittance when we deposit the proceeds to the shipper's credit. We must have a number of deposits that will go to one of the stockyards banks and we let those accumulate during the day

until a few minutes before the closing hour of the bank and then we write one check to cover a number of those deposits. That check would be payable to the Stockyards Bank to cover those deposits and we would pay one 2 cent tax on that check. In remittance to the shipper by check we have to pay a 2-cent tax on each check used.

On page 1079 in the former testimony, I stated that we sometimes got information about feed bills from nearby feed yards over the telephone. Now, practically all these [fol. 1028] feed charges come attached to the freight bills presented through the regular channels.

On page 1081 I referred to some of the services in connection with locating cattle on pastures in Kansas and Oklahoma. In 1930 we wrote pasture contracts for our customers and the pasture men for 14,650 cattle. When I say, our customers, I mean they are prospective customers. They do not always turn out that way. In one particular shipment in 1930 of 350 cattle, about 100 of these were shipped to the market to our firm, and at the end of the grass season the market was dull and slow. The banker and the owner of the cattle had so arranged to put these cattle on feed out at the Prospect Feed Yards, which we did, and they left those 250 cattle with us and went back to Texas. We eventually worked those cattle off and got more money out of them than they would have sold for at the time. That necessitated some of our own men making frequent trips out there to look at these cattle and see how they were doing and getting them in on what we considered was a good market. The markets declined and the owner of the cattle and the banker who had a loan on them both expressed themselves as very well pleased at the way the matter had been handled. In the 1930 pasture business was a shipment of 1,400 cattle that came up to Kansas about 30 days before the grass was ready, and we made arrangements with a man to feed these cattle for those 30 days and pasture them for the rest of the summer, and the owner [fol. 1029] of the cattle arranged with us to advance him some money on the cattle, pay the freight and the feed, and that deal did not turn out so well for us or the owner either. We lost considerable money on that transaction on account of a declining market. We still have the loss confronting us, that is, we have not recovered any of it. Another shipment at that time of 1,400 cattle originated in the state of

Nevada. We made the pasture contract, paid the freight, and we reimbursed ourselves. The owner of the land where these cattle were grazed lost his farm through foreclosure during the summer and we found ourselves in a controversy with four different interests. All of this resulted in a lot of questions, and it finally worked out to the satisfaction of everybody. It just made extra work. We had another shipment of 1,400 cattle and we advanced the freight temporarily for the owners. When we came to settle for the pasture bills we found that the owner of the pastures had made an assignment of the contract and that necessitated us to be very careful in seeing that the proceeds of the pastures got to the right place. For another shipment of 1,000 cattle we obtained the pasture, paid the freight temporarily, looked after the cattle nearly all summer, and sold part of them, but the big bulk of the cattle was returned to Texas on account of an unsatisfactory market. We got nothing out of that except the commissions that we earned on the cattle that we actually sold for them. The owners of the cattle both lived in Texas and depended a good deal on our looking after them while they were up in Kansas. That was in 1930. There was another ship-
[fol. 1030] ment of cattle in 1930 for which we obtained grass and made up different pasture contracts. There were 5,500 cattle. That business was scattered to St. Joseph, St. Louis, Omaha, and Kansas City markets. Our firm handled a good big proportion of them, but a lot of the business went to other firms. That number of cattle in Kansas naturally required a good deal of time to look after them and our employees spent much time at different periods in the season. In 1931 we did not have so many cattle in Kansas pastures. The situation this year is very different. We had written contracts for pasturage on about 10,500 cattle. On a four-load shipment that came up, the owner of the cattle was unable to pay the freight charge or unable to borrow it, so in his dicker with the pasture man, he required the pasture man to pay the freight. The pasture man borrowed the freight money from us. We carried it along all summer and we sold the last of those cattle yesterday. We collected for the freight charges we advanced, but I merely mentioned that as a service rendered in connection with that business. We carried the freight on 140 cattle that came up this spring, and we also

carried freight on another bunch of 260 head. We also located grass for about 3,600 cattle. Part of those were the 3,200 which went direct to Kansas pastures. 360 head came to the market direct this spring and on account of unsatisfactory market conditions we obtained grass for them and sent them back out to Kansas pastures. It has now been definitely decided that about 1,000 of the yearlings and the two-year-old steers will be wintered in Kansas [fol. 1031] and grazed next summer. That was the business we figured on getting this year. We may get it next year. These feeding contracts or wintering contracts were made in consultation with our local manager. These cattle belonged to a partnership. One man lives in Old Mexico and the other man lives in Chicago. On another shipment of 3,200 cattle this spring our Mr. Reed met the manager of the company owning these cattle and they spent two or three days in Kansas locating grass. The first shipment of those cattle came to our firm in Kansas City. We sold them and the price was not very satisfactory. The next shipment of cattle was made to Omaha, Sioux City, and Chicago, but not to our firm at those points. This company has now decided to put 2,000 of these cattle on feed up in Nebraska, so they are going out of our territory so far as this office is concerned. That is business that we figured on getting or hoping to get when we went into the deal. During the summer Mr. Reed looked at these cattle a number of times and reported on them to the owners. One time I met the manager of the company in Kansas and went through the pastures with him. On one shipment of 18 cars we paid the freight on them temporarily and were reimbursed by the bank which has the mortgage on the cattle. The owner of these cattle telegraphed our Mr. Reed to meet him and our St. Louis salesman and asked them to go to look at these cattle and decide on a shipping program. It turned out that most of these cattle are going to the St. Louis market. The one thing that [fol. 1032] makes it a more satisfactory market at St. Louis is that there is a little more advantageous freight rate to St. Louis; however, I am at the present time handling a claim for these people for an overcharge in freight on the shipments that went to St. Louis. That is a service that the expense of looking after it is paid at this office, and the St. Louis office is getting the benefit of the business.

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These matters which I have spoken of in connection with procuring pastures for cattle have all been handled by the Kansas City office. The Kansas City office is manned entirely by an employed personnel. Whatever expense has been incurred in doing these things would appear on our books and records. The time of employees and all would be included in the cost of doing business at the Kansas City branch.

At about page 1093 I mentioned some expenses which had shown large increases from preceding years. Our office rent is still $260. a month. There has been no reduction in telephone expenses. With the new Federal tax, the telephone tax increases about 10 per cent and about 5 per cent on telegrams. The Federal tax is charged directly to the patron of the telephone company or the telegraph company.

I have completed the reading of my former testimony. The cost of postage has increased recently with the new increased rates on postage to about 50 per cent on the first class and air mail. We have some air mail practically every day. That is mostly in connection with getting out account sales to long distances like Colorado or Texas points or the [fol. 1033] exchange of important matters between the different offices. There will be some shippers that will be along with their consignments and receive their account sales at the office but there will be enough men always where you have to send out two or three different letters with regard to shipments that will more than offset those times when a man is present and takes his account sale with him. To illustrate, in the case of a truck shipment we not only write the owner of the livestock and send him his account sale but we also mail the truckman a check for his dray charges. The truck driver usually is interested only in his truck charges and we do not frequently deliver the account sale to him. We will send out a good many more checks on truck consignments than we will on rail consignments. Remittances by check and cashier's check and the sending out of account sales are all handled as first class mail. All our mail goes first class except our circular work. The main reason for the use of telephone so much is a matter of convenience. Our shippers seem to want to use the telephone and it expedites the matter very much. Our telegraph expense is caused by wiring on checks to see if the banks will pay checks given to us in payment of purchases.

We also use the telegraph a good deal in quoting sales of cattle or sheep to shippers who do not accompany their shipments. They may be in Colorado, Arizona, or Texas. They all seem to like to know what their stuff brings on the market just as quickly as they can possibly get the information and it sometimes influences other shipments right away. A good part of our telephone expense is in [fol. 1034] conversation with the other houses finding out about the condition of the market at those points. That will frequently influence shipments to some other point. My impression is that there is not much difference in the total amount of the telephone and telegraph expense since 1929. I do not know of any concentrated effort to procure a decrease of rent in the Exchange Building. I think we are on about as low a rental basis as any of the buildings in town, particularly the new buildings. When everybody else was getting big rents we were not burdened with any increase. As a matter of fact we have paid the same rent ever since we have been in that building, which has been some 22 years. One decrease in expenses that went into effect this year has been in the salaries of employees. That was during the month of May, 1932. That was a 10 per cent decrease applicable to everyone. Another decrease in expenses along the same direction was payless vacations. Everyone was compelled to take a vacation whether he wanted to take it or not. That applied to everybody in the organization. I have heard through employees of other firms, and I know of some who have made similar cuts or even more drastic than that. Counting the payless half month, the percentage cut would probably run up to 15 per cent. There has been a decrease in the horse hire expense. We formerly paid $2.00 a day horse hire, and we now pay $1.50. That became effective two or three months ago. Generally the cost of material and supplies such as stationery has declined since 1929. There may have [fol. 1035] been one or two people that we had working for us in 1931 that are not working for us now. We might have hired somebody at a little less salary. I recall an employee who was making $150. a month. We dispensed with his services earlier in the year. We hired him again about the first of July for $125. a month. As between 1929 and 1931, I believe the salaries were practically the same. In April we let two employees go and their places have

since been refilled or the same employees have come back to work. One was a clerk in the office and the other was a stenographer. We do not actually remit the thousand dollars a month to the main office which is charged up on our books as an expense of operation. That was made effective beginning this year. We carry an account with our Chicago office, a checking account, just like we carry one with the banks, and they simply debit our account with that item of expense.

I specialize on the loan work. It has not required a great deal of my time this year or last year because of the low volume of our loans.

On page 1099 of the former testimony reference was made to our firm's activities in the 4-H Club work. We have been conducting our usual activity in that direction this year in connection with the American Royal. There is a good deal of work in that connection. We have one man in the office that spends a good deal of time at that and an employee in the yards. When the Show is on it is necessary for us to provide extra help in that department, but [fol. 1036] we believe it is worth while.

At page 1106 the sum of $10,500 was referred to as covering the capital required for our office at Kansas City and my attention was brought here yesterday to the amount set up this year as being $11,000 for that. After I was excused from the witness stand last night I had the boys in my office run off our outstanding purchases alone for the close of business yesterday, and the amount was $45,600. I mean by that that we had $45,600 worth of unpaid purchase items, that is, cattle that we had bought to go to the country for which we had not yet received payment, or at least the payment had not yet been deposited in the bank. The bulk of that is on stockers and feeders. There may be a load or two of packer cattle in it. I think it is all cattle. The heavy run of stockers and feeders extends from July until the latter part of November. I think September and October have the heaviest receipts of stocker and feeder cattle.

I have with me an analysis of our bank account in the Interstate National Bank for the month of August from which it will be observed that they charge our account with $97.00 for interest on the account during that month. That expense does not appear on our books anywhere. The

financial office in Chicago takes care of that expense. During the month of August this year there was not a single day that the bank statement shows that we have a book balance in there running all the way from $5,500 to $41.000. That is, on every day of the month the books show and it is confirmed by our own bank account that we had satis-
[fol. 1037] factory balances in the bank at the close of the day. There were outstanding checks against the account which created realized overdrafts on every day excepting five. On those other days during that month our realized balances with the bank were in red ink. Those overdrafts amounted in one day to $47,000. On that particular day the bank statement shows that our bank balance was $27,500. We had $75,000 worth of outstanding checks against them, creating a realized overdraft of $47,000. The big sum of $75,000 outstanding represented purchases which we made for the preceding days. On that day the amount of country checks was $33,000 and the preceding day it was $8,000 and the day preceding that it was $36,000. On all of those three days checks were perhaps still out, that is, payment had not been received in funds available in Kansas City, and the items were analyzed as being outstanding against our account. By country checks I mean checks on out-of-town banks given to us for payment of livestock which we have purchased. The need for capital outside of the loan business relates mostly to the buying of livestock and most of that is at this late summer and fall season of the year. It relates mostly to the buying of stocker and feeder cattle during the heavies buying months. I think our charge for interest in the month of July was $33.00 and something. The analysis which I have here includes proceeds from the sale of livestock. I don't think there was any loan business in that month at all.

There has been no general policy in regard to retrench-
[fol. 1038] ment of expenses involved in advertising and soliciting. The policy has been to curtail expenses as much as possible every place we can. There is a difference of opinion whether it is advisable to abandon our advertising campaign or spend less money for advertising when our volume is down. Some people think that that is a poor time to quit advertising, and others think that it is the time when you should exert more effort in that direction. We have worked hard to try and maintain our volume of business and the harder we work the more money we will spend

at it. I do not know just what the figures will show on that, but I know that I have worked very hard, all of us have worked very hard, trying to maintain our volume of business. We have not been able to maintain it at the 1929 level in respect to sheep and hogs particularly. One reason for the decline in the sheep and hog business is a decrease of about 15 per cent in the receipts of sheep at this market this year as compared with last year. Another factor is the situation that exists at Denver at the present time under the new freight schedules. In January of this year the railroads put some new rates into effect. Formerly we could buy sheep here on eastern orders and go on with them from point of origin to destination. That was taken away from us in January of this year. That condition does not exist at Denver. Denver will show, I think, an increase in volume this year due to that fact. Another thing is that more fat lambs have gone direct from Utah points to eastern orders this year than heretofore just on account of the satisfactory freight charges. I do not know [fol. 1039] how the hog receipts compare. One thing might be that the employee who sells our hogs is not a member of the Exchange and does not get out in the country at all to try to build up his hog business. We have to depend entirely on our advertising and what we can do by correspondence.

On page 1153 of the former testimony the matter of liability insurance was referred to and I testified that our firm did not carry any liability insurance. I think that condition has been changed and that we do now carry blanket liability policy which our head office provides for and the expense of which is paid at that office and does not appear in our expense. That covers employees' liability in case of accident and accident to customers whom we are transporting to and from the nearby feed yards. I do not believe we carry mortgage and theft insurance. I think that we did formerly but some different arrangements were made in Chicago with some attorney to handle those cases for us, and the expense of these attorneys is charged at Chicago and not at this office. Whenever an occasion arises we immediately refer the matter to the Chicago attorneys. We have not had any loss of that nature lately but we have had a good many narrow escapes. Except as I have explained and modified or changed my former testimony,

it will apply and does apply to conditions as they exist now.

[fol. 1040] Cross-examination:

The Morris feed yards have added to their capacity and have built cattle feeding sheds. It is my opinion that more cattle are fed in the Prospect yards than ever before. As a rule that involves additional work on the part of the commission firms. Those cattle are owned by people who live quite some distance from here and they depend on the commission firm to supervise the feeding of them and watch the operations rather closely. If we have any cattle feeding at those places we will make one trip a week at least to see how they are doing, and report to the owner. Frequently it happens that we take the owners or their employees out to the yards. I think there is a liability in connection with these trips insofar as injuries might be suffered through automobile accidents. We have been fortunate enough to escape them so far.

The higher taxes relating to telephone and telegraph, postage and checks took effect in 1932. That did not serve to increase our expenses in 1931, and such increases in expenditures would not be reflected in the audit of our business for 1931.

I do not think we could operate the business of John Clay and Company here at Kansas City on a cash working capital of $11,000. I believe it would be impossible. The total volume of our sales and purchases in 1931 amounted to $12,267,000. I do not think a cash working capital of $11,000 would adequately safeguard the handling of that amount of money and protect it from the emergency and the business hazards to which it might be exposed as it [fol. 1041] passes through our hands. One day this week it was necessary for us to draw on Chicago for $25,000. On another day it was necessary to draw on them for $40,000. Yesterday it was necessary for us to draw on them for $25,000. We could not have done what we did do this week if we had been limited to the sum of $11,000 in working capital. Our cattle purchases this week at the close of business yesterday amounted to 98 cars.

I think that every outlet that we have or provide for livestock is a benefit to the market, and if we can, with a

reasonable degree of safety, provide credit for a limited time we are benefitting the market just that much, and as we benefit the market and relatively increase the price by adding competition we tend to add selling volume to the market. As far as I know that is the attitude of practically every market agency on the yards. They go out of their way to get additional buyers and additional competition to center itself on the market and create a competitive demand.

I think the activities of the firm in the loan business has been a very big advantage to the market, for the reason that we maintain houses at Chicago, Sioux City, St. Louis, and shippers to those markets obtain their feeder cattle at Kansas City as a rule. The more cattle we find a buyer for we are helping the market and are helping the producers or shippers to this market, we are helping to create a demand for his product, and I think that any expense at Kansas City in connection with our loan business is offset by that benefit. It is a benefit to our agency because it tends to reduce its unit cost when we increase the volume [fol. 1042] of the work and especially when we increase our own volume. I think it is true generally that the loans made by John Clay and Company have served to direct the business to our firm and help control it. While our activities here may benefit John Clay and Company in the St. Louis or Chicago or Sioux City offices, their activities in turn may and do benefit us here. John Clay, F. H. Connor and Alan Wilson personally supervise the management of the commission end of our business. Mr. Clay has had over fifty years of experience, Mr. Connor about forty-five years, and Alan Wilson about thirty years experience in the commission business. In my opinion their knowledge of the industry and their acquaintance with those engaged in it and the name of John Clay and Company are of advantage to our office here in securing business. Their actual activities in the supervision of business and contacts are an advantage to us in the management and in handling of the business here.

The item of $355 covering charitable donations in our audit for 1931 covers in part the donation made to the Allied Charities of both Kansas City, Missouri and Kansas City, Kansas. Part of it was made to the Boy Scouts, Girl Scouts and Camp Fire Girls. I think there might have been some flowers charged to charity on account of funerals of

deceased patrons. I think that was a very reasonable amount. As a matter of fact the charities campaign manager this year has already requested us to increase our donations to them by 150 per cent. It is operated under the super- [fol. 1043] vision of the Chamber of Commerce and is conducted as a community chest proposition. It serves to relieve distress and poverty that would probably have to be otherwise relieved at public expense. I think all of the items of expense which I, as office manager, knew the firm of John Clay and Company to incur in the year 1931 would be considered reasonable and necessary in the conduct of our business. We are endeavoring to reduce expenses every place we can without jeopardizing the business. We are doing that as conditions change and demand it. It is part of our gospel to run the business on as economical a basis as it is possible to run it and still maintain its efficiency. We preach economy all the time. We installed within recent months three-minute egg timers at all of the telephones so that when a fellow started to talk on long distance he could set his three-minute egg boiler and try to gauge his conversation to that extent. The idea struck the fancy of one or the bosses so favorably that he insisted that we supply all the offices around the circuit with a number of those timers. There is no expense charged to our Kansas City office in connection with the employment of attorneys to represent us in any matters involving the sale of mortgaged or stolen livestock. The same is true with reference to the expense incident to the liability policy which I referred to. To a certain extent the contracts and intimate acquaintance established by our salesmen in their work in the country and through the operation of a loan business are of value in protecting against or minimizing [fol. 1044] the hazards involved in the guarantee of title which we put on the livestock ourselves. Our men in the country pick up certain information of that kind which they impart to us and enables us to protect ourselves in some instances. The information which we get through statements of our customers for whom we carry loans is of some value to us in knowing how their financial affairs are arranged. It is an additional safeguard in the disbursement of proceeds. If we know something about the financial conditions of the men for whom we are selling cattle we have a pretty good idea of whether or not the livestock is mortgaged. Having that information we exercise more dili-

gence perhaps in handling the proceeds than we would if we knew nothing about his financial condition. The more information we have about our shippers works to our advantage. That would undoubtedly be true in connection with the operation of the business of other market agencies at Kansas City.

The gross commissions of my firm for 1929 were $148,600; for 1930 they amounted to $158.700; and for 1931, $157,100. The gross commissions for the first nine months this year were $93,900. There was an increase in our sheep business in 1930 over 1929. That increase extended into the year 1931. Our firm does relatively a greater volume of sheep business than other firms or the average market agency at Kansas City. A substantial portion of our business here at Kansas City has been the sale and handling of sheep during the years mentioned. The total value of stock bought and sold during the year 1930 was $17,000,000; in 1929 it was $20,300,000.

[fol. 1045] Redirect examination:

The expense incident to the existence of the Prospect and Morris feed yards making more work necessary for our firm is reflected in our records. Those yards existed in 1929 and 1931 as well as at the present. Notwithstanding the fact that in 1931 we handled considerably more livestock than in 1929 the gross value in 1929 was much higher. That was due to a difference in market prices. I cannot tell the amount of cash working capital needed by our office here. Fortunately there never has been any limit to what we could get hold of very quickly if we needed it. It varies from day to day and from season to season. I said that we made no segregation of cost or expense as it pertains to buying and selling. I believe the business can be handled at less expense together than it could be handled separately, that is two different departments, one of which would handle the selling end of it and another department handle the buying end of it.

The business has not been profitable in the last two or three years. That has been due to the declining markets and loss sustained in connection with these loans. These losses, however, are not reflected in our profits or losses at the Kansas City office.

Mr. Clay devotes his personal supervision to the business now in the same way but I do not suppose quite as

much as the other partners. I think any business could be conducted without any donations to charity if they had to. Our failure to make donations would not affect the volume [fol. 1046] of our business. I feel that as a part of this community we should contribute to the charities of the community.

The Chicago office has always taken care of the mortgage and theft liability. John Clay and Company does a more extensive livestock loan business than the average market agency at Kansas City. John Clay and Company's business at Kansas City is conducted entirely by his employees.

Recross-examination:

We made a comparison of the gross revenues under the present tariff No. 3 compared with the former tariff No. 2 for four weeks commencing May 23. The decrease under the new tariff as compared with the old tariff was 8.6 per cent; on cattle it was 8.3 per cent, on hogs 16 per cent, and on sheep a little over 7 per cent. I do not think a comparison for a four week period is an accurate comparison.

Redirect examination:

As office manager for John Clay and Company I have had experience in applying tariff No. 3 and tariff No. 2. One advantage of the new tariff is to cover the situation in regard to the two 36-foot cars being used instead of one 40-foot car, or five 36-foot cars being used instead of four 40-foot cars. There is also the situation which has arisen quite recently with respect to different railroads now using a very low minimum on short-haul stuff. I think they provide for a 10,000 pound minimum on nearby shipments, the reason being to combat the increase in truck business. [fol. 1047] The extra draft charge and the charge of five cents each for extra checks over one will in a manner take care of the two cent tax on checks and additional cost of postage. I have in mind a shipment of heavy weight grass cattle that load about 23 to the car, cattle weighing 1,200 pounds. Under the new tariff that class of business on the headage basis works rather to our disadvantage. It makes a pretty deep cut in the present rates over the old rates. I have no other disadvantage in mind. I do not think our office has experienced any difficulty in applying

the new form of tariff. Tariff No. 3 is the tariff approved by the Livestock Exchange and used by all of its members. My firm did not make up the form of this tariff; I do not know who did make it up.

Recross-examination:

Before this tariff was filed by our firm we did personally assist in running tests of different forms of tariff as applied to different sorts of consignments. We applied some tariffs at the other markets and applied different tests. We did assist in making investigations as to the effect of different suggested forms of tariffs. I consulted with Mr. Gage several times in regard to the matter of the formulation of a different tariff. In referring to the change in the railroad minimums and the adjustment of the new tariff to that situation I had in mind the advantage which would arise out of the fact that it applied itself more equitably to the volume sold rather than any increase in revenue as compared with the other form of tariff.

[fol. 1048] Redirect examination:

In saying that the Secretary's tariff would be $13.00 on the 12 head of cattle shipped in a car I overlooked the provision that the drive-in rates would apply when a car contains less than 14 cattle. In a car containing 15 cattle the commission would be $10.50 under Tariff No. 3 as compared to $13.00 under the Secretary's tariff. That difference is due to a minimum prescribed in the Secretary's tariff. I believe the employment of a minimum and maximum in a tariff is liable to bring about rather arbitrary differences.

Recross-examination:

I think some consideration should be given to the value of the commodity handled in respect to the differentiation of rates as between species or classifications within species. We do not get very many complaints about charges. I believe that consideration ought to be given to the ability of the traffic to bear the rate in so far as different commissions are applied to the different classifications and species.

Whereupon the witness was excused.

MR. FREDERIC H. OLANDER, a witness called by the Government, after being sworn testified in substance as follows:

Direct examination:

I am the same Mr. Olander who testified at the former hearing in this docket and whose testimony is contained on pages 29 to 387 of the transcript of evidence in that [fol. 1049] hearing. I hold the same position with the National Livestock Commission Company now that I held at that time. I have read over the testimony sufficiently to refresh my memory as to the statements I made at that time. There have been some changes since 1929. The larger part of my testimony has to do with the operation of the business at the yards. I went pretty thoroughly into the details as to how cattle are handled from the time the train which conveys them to the market is set at the chutes until the account sale is made out in the office. As far as the actual operation of the business at the Kansas City market is concerned there has been very little change. On page 36 the question was asked me: "Where principally do the fat cattle come from to the Kansas City market." Since I testified the feeding of corn to cattle in the State of Texas has been accentuated to quite some extent, and we are also getting now fat cattle from the State of New Mexico in larger numbers than we did at the time of my testimony.

The volume of rail shipments to our firm has decreased materially and we do not need at the present time more than one train runner. We have been able to economize there on the expense incident to the train running. We had two train runners in 1931. On pages 54, 55 and 56 the testimony was given with reference to plural ownerships and the handling of plural ownership consignments after they reach our pens. Since 1929 the truck receipts of cattle to the National Livestock Commission Company have increased and while rail volume is less, the plural ownership shipments in proportion to that volume have increased, making it necessary to have more pens avail- [fol. 1050] able for the handling of cattle both by rail and truck. In our case we have been handicapped by reason of the tightening up by the Stockyards Company of their pen space area in which we lost ten or twelve pens that we formerly had. The number of units has in-

creased and the cattle arriving by rail must be sorted a large number of times. I do not ever recall in my experience as few carloads of cattle coming by rail to the market from one owner that required no sorting. I think the tightening up in the pen space affected quite a number of firms located north of the Exchange Building. This tightening up was caused by a desire to eliminate one of the scales at the north end of the yards and to provide additional facilities for the receipt of truck-in livestock. Since the time of my previous testimony we have employed a man who devotes the major part of his day's time to the bringing of cattle consigned to the National Livestock Commission Company from the gates to our pens. At the time I testified that work was being done by a concern there that was doing the yarding for a number of firms and it was not satisfactory to our customers. We hired a man full time to take care of that particular business. That change came about in February, 1931. The customers in the country are becoming more exacting with reference to their commission representatives visiting their feedlots in order to appraise their cattle and advise them what to do. This has been brought about primarily by reason of the fact that the margin upon which the cattle feeder operates today is more narrow than it was in [fol. 1051] 1929. It requires more careful watching of the markets on the part of stockmen in the country because we have been in a period for several years now of very er-atic, uneven markets, and during the course of a business day we may get many more calls from customers in the country wanting to know about the state of the market and what we think they ought to do with their cattle than we did back when cattle prices were more favorable. I run into other commission men in the country when I go out occasionally, but I never have heard of any instance where a stockman in the country would invite two men at the same time to price his livestock. Of course it might be possible that he might want to use one man's judgment against another's. The point I wanted to make is the fact that we have been restricted lately in making trips at the request of customers in the country by reason of the fact that the revenue today is not what it was in 1929 and so many years prior to that. We must exert a more careful supervision if possible over our business and try to make

every penny count, because, if we do not, the first thing we know it is going to be just too bad. In the case of my own firm every item of expense that we carry on our ledger, country trips, postage and stamps, advertising, market information, all show a big decrease in 1931 and 1932 as compared with 1929. In my former testimony we were limited in the kind of a pattern we wanted to cut for our particular business by the cloth that was handed down to us, and I do not think that there is any man who would not think perhaps that is a good thing. I think, in my own personal affairs, if I had had to have limitations put [fol. 1052] around them, I might be better off today, but this work in the country is advantageous to the commission man as well as the man who owns the cattle in that he is permitted to keep contact with people in different communities and know their conditions and know the way they handle their livestock. That better fits the commission man to represent the owner when he comes to the market. It seems like every year it is becoming a little more difficult to dispose of cattle, requiring more time to sell a number of cattle than it did some years ago, and, of course, this condition has been accentuated by reason of the depression that has existed now for some time. At the time I testified we had two fat-cattle salesmen and we still have two fat-cattle salesmen. One is devoting more and more of his time to the buying end of the business. We still have two butcher-cattle salesmen and one calf salesman. Instead of two hog salesmen we now have one hog salesman, the business not warranting the retaining of two hog-salesmen on the yards. The reason for that was the decline in the volume of rail hogs. Our truck receipts of hogs have increased since 1929, but our rail receipts have dropped off about 75 per cent. We still have a stocker and feeder salesman. We have a different sheep salesman than we had in 1929. He is a man who owns his own business and handles our sheep on a half commission. We eliminated one hog salesman the first of this year. The change in the sheep salesman was made some time this spring. The reason we made the change in [fol. 1053] the sheep salesman was because of the fact that we figured we had too much office space and we asked Mr. Tice if he would not move his office from his then location into one end of our office, and he agreed to that. Mr. Tice is now selling our sheep. It has been much more

satisfactory to us from the standpoint of decreasing the amount of rent we pay as well as having him available right there when we need him. It decreased our rent $20.00.

The qualifications of salesmen have not changed any, but it has been necessary during the last few years to reduce the wages of these employees quite substantially, and while it is rather difficult to sense in a man whose salary has been cut, a lack of, or rather a lessening of his loyalty to the organization or to the man whose livestock he sells, there is always a chance for that. In my own firm as far as our yard men are concerned, we have them down pretty well to pre-war wage level. We have had to put in the background any feelings that we might have as to the real worth of our employees in dollars and cents because it has been a proposition of paying them what we could afford to pay, and reductions in our own firm have ranged from 16 to 50 per cent from the review year of 1929 as compared to the present year of 1932. Starting in 1931 we made some reductions in instances of some persons from the second or third year after our organization started in December, 1926.

In the case of my own firm we do very little advertising in magazines or newspapers. We have tried to limit [fol. 1054] that from year to year. The extent of it at the present time is an advertisment that we carry twice a month in the Kansas Stockman, the official publication of the Kansas Livestock Association, and in a few county publications or farmers' guides as they are commonly known. At the time of the last hearing we were carrying some advertising in one of the local Metropolitan dailies and since that time that has been discontinued. I understand in the Secretary's order that the large share of the advertising expense incurred by commission firms was eliminated, and that in this elimination was part of the expense incurred by commission firms in keeping the country informed on the trade from time to time. It is my opinion that it is unfair to the commission firms to eliminate that expense because of the fact that the country desires it. In the case of my own firm we send this market report weekly and with the exception of several hundred prospective names we send the market report only to those who patronize our firm with their business. In other words it is a medium of information rather than a

medium of advertising, and for that reason I consider it unfair to eliminate from consideration of the cost of doing business the major part of that expense. It has not come to my direct attention in any instance that the discontinuance of free subscriptions to the market paper has hurt the market in the decrease in volume or anything of that kind. If consideration is given in the construction of a rate for the services of a commission firm along the line of what a firm should reasonably expend for purposes of advertising and informing their customers of [fol. 1055] the condition of the trade, and that consideration take into account what expense is necessary, I think perhaps there should be certain limits put around it. I think most businesses budget their expense along that line. It is pretty hard to tell just what amount is necessary. For instance, at the present time, due to the greater competition that we have at the market we are required to perhaps spend more than we otherwise would if we didn't have that competition. I think that we perhaps have done more in the way of attempting to get business in the last few years at the expense of salaries than we have in my experience. The owners have reduced their salaries, and we realized several years ago that, with the advent of the Government subsidized cooperative down here, that it was going to mean we were going to have to go out and work harder in order to maintain our volume, and we have had that to contend with, and it has made a real problem for us, to know just what we can do in the way of expending money for the purpose of trying to maintain our volume. We are handicapped in our own firm by reason of the fact that we do not make any loans. These large firms that have big financial resources can go out and make loans and especially in times like these when so many stockmen cannot get credit at their country banks. A firm that is in the loan business can take care of them and in that way maintain their business to a much better advantage than my own firm where we must depend entirely upon the business of those who ob- [fol. 1056] tain their finances from other sources. In a firm like ours it is a problem to maintain the volume that we would like to maintain in the face of reduced revenue, in the face of a diminution of the volume at the market, and in the face of the competition in the form of cheap

money that this competitor that I just mentioned has access to. There are some small firms down there that do a loan business. I do not know what percentage of the firms do a loan business.

As to the percentage which a firm could in wisdom and good business sense afford to spend out of its revenues for business-getting and maintenance I think that it would vary with different firms. Some firms with a large number of customers in the country might by reason of that large number be required to spend more money than a firm with a smaller number. I really think that newspaper advertisements and specialties and novelties, which are memorandum books and pencils, properly belong under the head of advertising, but I do not agree that these letters of market information which go to our customers in the country are properly items of advertising nor the postage incident to the sending of them. We send out a letter, either one printed on paper or one printed on a card each week, and it contains a story of the market for the first part of that week and quotes the prices that various classes of livestock have commanded during the period of the week that the letter applies to. We send it out at the time of the week so that it will reach the man or men for whom it is intended in time so that he can make up his mind if [fol. 1057] he desires to patronize the following week's market or the market the first part of the following week. He has at least some idea as to what the market has been and has our comments as to any particular conditions of the trade that would give him advance information of what he may expect the following week. There is sometimes a very congested condition in the beef trade at the time this letter goes out and the letter sets it out, and that is an indication that possibly the market the following week will not be good by reason of the fact that there is a congestion of meat in trade channels. It has been my experience that the trade looks forward to these letters. At certain seasons of the year we eliminate from our mailing lists the names of men that do not come except at another season. It may be that in some particular instances these men may have livestock at that particular time that we know nothing about, and they write in and want to know why they have not been receiving the letter. In trips that I have made to the country I have come across instances of that kind where men want to know why they have been

cut off from our market letter service. In my opinion it is a service that is rendered to our customers that is valuable. The mailing list is not made up exclusively of names of our own patrons. We carry a small prospective list along with those which I think I can safely say that over 90 per cent of those we circularize with these market letters are people who consign their livestock to us. Aside from daily correspondence that we have with certain people, [fol. 1058] which is a continuous thing in the commission business, the market letters are the only kind of circulars we send out. Of course, personal letters would not properly be classified as circular letters. Some firms use cards, some use multigraphed letters, some use printed letters, and some use four-page papers. Our firm does not send out general circulars just for the purpose of soliciting patronage. I think it has been done. I have written to men to tell them I would like to have an opportunity of serving them in the sale of their livestock. In this report of ours I write the cattle end of it, and the circular is written by our own people. It represents our own views of the market. The information in all the market reports, whether gotten out by the Bureau of Agricultural Economics or the Daily Drovers' Telegram, would be similar in character. That is going into a description of the trade from the viewpoint of that particular writer. I am conceited enough to think I can write a better market report than some other people can. Our circular summarizes and draws together with general information which may be gathered from various sources and gives to our patrons the slant of our firm on the market. In these market letters we usually carry quotations as to certain sales that we make. We instituted that at the request of a patron. The patron stated that if he knew what his neighbors' cattle brought it would help him in forming an opinion of what his own cattle would bring. We carry sales of the various men's cattle and try to pick them up in various communities and locali- [fol. 1059] ties in order that people may be advised as to what a certain man's cattle brought. I think there is a certain personality to our market reports.

Traveling is divided into three divisons on the blue audit. When a man travels in the country I think as a general rule, aside from the work that he does in appraising the livestock of the farmers that he contacts, he will also do some soliciting. That varies with different in-

dividuals. We have men on this market that have never asked a farmer for his livestock. Personally I do very little asking farmers for shipments when I am in the country. My trips are usually confined to localities where I am known and where I am requested to come. It is difficult the way the business is changing at the stockyards to keep the various items of expense within the bounds that we may perhaps like to keep them. This livestock business is undergoing a marked change. Small markets are springing up all over this trade territory. I think I can name as many as twenty little markets that have grown up in the last few years that are intercepting the volume that this market used to get. Those are small markets and they are within a radius of a hundred miles of Kansas City. Thus nearly every little country town has a community sale once every week or once every two weeks. Farmers bring their livestock in there and dispose of it. All that is making it more difficult for a commission firm to maintain its volume. We have either got to go ahead and expend more money and more effort or we have to get out of the picture. With respect to those different [fol. 1060] points along with the feeding stations like Morris and Prospect, livestock can be shipped from country points into these places and go on from there with fewer restrictions than they can on the great competitive markets of the country like Kansas City. We have certain restrictions placed on these markets that these other yards do not have. A change of ownership cannot be made at Kansas City any more and use the through billing privilege. Livestock can be shipped to Morris or Prospect feed yards and after change of ownership go on using that same billing. That has worked a hardship. Another thing is this re-adjustment of railroad rates, the advantages to the shipper in the way of smaller rates for the long haul shipments has cost us at the Kansas City market, and I refer now not only to the National but the market, a good many hundred carloads of cattle from that country feeding station near Fort Worth, Aledo and Cresson, Texas, that have gone right through our market this summer direct into Chicago because they can go on to Chicago from Kansas City, they can go on to Chicago from the point of origin for just a very few cents more than they could come to the Kansas City market. That has

had a tendency to carry this right through our doorway to foreign markets whereas they used to come in large numbers from the Kansas City market. In the case of my own firm we made several trips down into that section and bought several hundred head of those cake-fed cattle for parties in Iowa. We went down there at the request of these Iowa parties. I think consideration should [fol. 1061] be given to this matter of allowing the privileges to these little outlying points and refusing the same privilege to a great market like Kansas City that is responsible for maintaining for the farmers of this country fair registration of the values of livestock. I have known of some instances of men that have been very successful in acquiring business by going out into the country and merely asking farmers to ship their livestock to them. Personally I am not constituted in that way, but it may be possible that I will have to resort to that if the volume keeps slipping from my own firm as it has in recent years. The main thing that holds me in this business is the contact that we have with the men who ship cattle to the market, and the fact that I have an opportunity to contribute in my humble way to their service. These contacts which frequently are classified and spoken of as appraisal trips have the dual effect of helping the farmer in his marketing of livestock and also helping the commission firm in obtaining and holding business. The item of travel in connection with conventions and meetings has always had a part in the operations of the commission business. The conventions are meetings of livestock men and we do not go to these conventions just on our own initiative, but practically always we are invited. I think it is safe to say that the larger part of the membership at Kansas City was always invited to the meeting of the Kansas Livestock Association at its annual convention. In my own case I have had annual invitations to attend [fol. 1062] the Nebraska Stockgrowers meetings and other stockgrowers meetings located in different parts of the country. At the Kansas meeting an opportunity is provided for the commission men and the pasture men, and the owners of the livestock to get together to try to deal on pastures. It really is economical for the reason that it puts the three men together at one place at one time. That is about the time the grass pasture deals are being

made, and while there have not been many deals made at the convention in the last couple of years because of the difficulty of the pasture man and the owner of the cattle getting together, the cattle owner demanding that rates for the pasturage be reduced materially from what they were a few years back, still at the same time in years past many thousands of acres of Kansas and Oklahoma pastures have been leased at these meetings. The other meetings that I referred to are meetings of stockmen. I have an invitation on my desk at the present time to come down on the 14th for a cattleman's meeting at Eureka, Kansas, and it has been an annual affair now for a number of years past. I think these contacts are advantageous to the producers of livestock and to the commission man who sells it. Personally I think the item of local and miscellaneous entertaining should be held to a very low maximum. We are called on at different times of the year when certain patrons are on the market to entertain them. It has been very seldom in my own personal case that any expense we have had in entertaining customers is charged to the firm. We have some men who come from long distances and when they come they spend several days. In [fol. 1063] the course of those days they expect some of our people to be with them, and the expenses incurred are charged to the firm. I have always preferred to take care of those items personally, but other members of the firm do not look at it like I do.

I think the Exchange has been a real benefit to the farmers of the country who patronize the market, and in order for that organization to function it is necessary for the members to supply money to the organization to keep it going. I would not care to operate on a market that did not have an Exchange to do the things that we have outlined above in protecting the interests of the men on the market, as well as the men who patronize the market in the sale of their livestock. I think that pretty generally among farmers the benefit of the Exchange is a reality and that they would not object to including in the cost or in the charge that they pay an amount necessary to maintain that body in the work that they have undertaken, and which they have been carrying out these many years. I think that the expense of the radio broadcast by the Exchange can be properly allocated to the maintaining of business, but at

the same time it is of tremendous value to the men in the country. You cannot imagine what a radical change these radio broadcasts have made in the livestock business. It is information that a man gets right now, and many men who have radios in their farm homes make it a point to be at home at the time of some of these broadcasts. They get the state of the market and in many instances at points within a radius of 200 to 250 miles they can get those mar- [fol. 1064] kets and have their livestock on the market the next day. I personally believe that the rendition of helpful service to the man in the country who produces and markets the livestock is responsible in large measure for the maintaining of the clientele of farmers to my particular business, but at the same time I do not think that that is all of it. The personal help that I can give through advice or counsel to these farmers along with the information that we send them from the firm from time to time and the efforts that we put forth, all of them come in the picture in maintaining this business. I do not think that we have been extravagant in our own firm in the expenses that we have gone to as set out in this audit that we have been talking about. We have been forced, however, because of the revenue coming in, to curtail the amount of market information that I would like to send to the eastern corn belt states. Those states furnish many buyers for our market, and we would like to represent as many of those men as we can in the selection of the stocker and feeder cattle. I have not spent as much money in the east as I have in years past and as I would like to do now, but the information as to what percentage we spent in the National you now have. I do not know what it is, but it has all been expended in good faith and with the desire to maintain our business and at the same time be helpful to the men in the country that we serve or those that we strive to serve. The expenditure for these items will be governed to some extent at least by the prosperity of our business and the amount of our rev- [fol. 1065] enues. The number of firms at this market have been decreasing, and I do not believe that it would follow that as the result of the expenditure of money and effort on the part of one commission firm or a number of commission firms which would increase the volume of the business, that it would naturally follow that more firms would come

in and pick up that volume. The business in its present unattractive form in which condition we find it at the present time, I do not believe is conducive to drawing new people into it. The fact of the matter is we have had a very few additions to the business here. It is a business that has never been what you would call a highly profitable business and it seems that people now-a-days, or in times past at least, have tried to seek those businesses that were highly remunerative. It is common knowledge among those who have spent years of their lives in this business that you cannot expect any big profit. The very nature of the business requires that we carry a force that will take care of the peak load or a large part of it, and yet when our load is very light it means that we must carry an overhead that other business may not have to carry. You cannot go on the street and pick up a man and bring him into the yards and hire him for a day or two to do this business. We want to keep men that are skilled and experienced and in order to have them when we need them we must carry them at periods of the year when their services, when they are not required to render as much service as they do when the [fol. 1066] peak load is on. In years of large volume, the business is naturally more profitable than it is when the volume is down. I can now testify more conclusively along the line of the competition afforded by the Producers Commission Association on account of the help which it obtains from the Federal Farm Board. I testified at the previous hearing that I knew that money had been expended by that organization in setting up out-door advertising signs along the highways, and that, in my own particular case, I felt that the expense of that kind of advertising was prohibitive under the tariff we were using at that time.

Now, I find that in the instance of this Producers Commission Association, their business shows a substantial gain each year from 1929 on. And I attribute that to the fact that they have been able to finance different stockmen, some of whom had been patrons of my organization and who, prior to the establishment of the Producers Commission Association as a subsidiary of the National Livestock Marketing Association, had been receiving their finances, enabling them to handle livestock from other loan companies or from their country banks. This has been, as I think anyone familiar with the situation on this market would

think, in large measure, responsible for the gain in volume that that company has enjoyed during the last few years.

The very condition surrounding so many livestock men in our trade territory, brought on by the distressed conditions of the times, the losses that they had occasioned through the handling of livestock, made it impossible, in [fol. 1067] many instances, for many of those men to obtain their financing of livestock operations from the sources that they had been obtaining them from in years prior to 1930, and several of them, to my personal knowledge, obtained their finances from this organization against their wishes; that is, I mean by that, they disliked very much the idea of having to go to this organization to obtain those finances but were forced to by the stress of the times and the conditions surrounding the organizations that had been financing them prior to that year. It is not my idea to infer that it was not a good thing that these men had that source from which to obtain their finances for the handling of livestock. The thing that I have always objected to is the fact that the same privilege afforded them was not afforded my own firm or the other firms on the Kansas City market. The funds supplied by the Federal Farm Board would be extended to but one cooperative selling agency, and that has, since that time, been the practice of the Federal Farm Board through the National Livestock Marketing Association.

We still have the direct buying of hogs with us, growing all the time. For the present year at the Kansas City market, the hog receipts direct to packers total 1,440,000 head, as against 1,067,071 handled through the market. There is a continuous program on the part of the packers to acquire large numbers of hogs off the market and away from competition, and basing the prices upon which they purchase these hogs on the prices established at the Kansas City [fol. 1068] market. Then there is this competition, on one side in the form of a Government subsidized cooperative, on the other side by these small markets growing up all around us, more particularly numerous in the last year or two, intercepting the flow of livestock which, before their establishment, came to the Kansas City market. All of these things have the effect of making it especially difficult to establish and maintain the kind of a volume that we would like to establish and maintain. I understand that

commission firms are not eligible for loans, but that the branch agencies and the head offices are going to deal directly with the individual stockmen. I understand, however, that it is the purpose of that organization to extend credit to farmers without regard to whether or not they belong to a cooperative organization. It has been my understanding that a commission firm could not do that, but that they might organize themselves into a corporation acceptable under the law and by the putting up of sufficient capital obtain a line of credit with the intermediate credit banks. With regard to the suit that was instituted against us and which at that time had not been settled, arising out of the failure of the Minneapolis Kansas Bank, we having sold some cattle and remitting the proceeds to that bank to the credit of the shipper, the bank failed and it developed that the mortgage was held by the Kansas City bank, and the Kansas City bank brought suit against us. That suit was settled out of court at an expense to us. That case was settled out of court at an expense of $2,257.40. Two thousand dollars of that was paid to the parties who [fol. 1069] were suing us. We did not carry mortgage and theft insurance at that time but we carry it now. I can testify now to the effect that there have been reductions since that time in the drawing accounts of owners of the National Livestock Commission Company. A settlement of the account of the failure of the Minneapolis, Kansas bank was made last year, 1931. The money expended should appear in the expenses for that year. We started to carry mortgage and theft insurance in 1931. I have listed here the instances that I picked off our record yesterday morning, and I will enumerate them for the years in which they occurred. In 1930, there was a loss occasioned by our paying a draft on which the livestock failed to net the amount of the draft, and which we have been unable to collect, to the amount of $130. An item of $2,307.64 represents a draft drawn on us for the purchase of cattle in the country by an Iowa man, we carried that for several years in the hopes of collecting it, but the man has never been financially able to pay it. That has been eliminated from our books during 1930. Then there was an expense in 1930 incident to depositions in this Minneapolis, Kansas Bank failure amounting to $97.90. In 1931 we had a loss of $235.40 occasioned by our purchasing for a customer on the Sioux

City, Iowa market a load of calves which he would not receive. He gave us the order over the telephone, we called him back and described the calves we were going to buy and he told us to send them up, and when they arrived they did not measure up to his expectations; he turned the draft [fol. 1070] down and we were forced to have that load of calves sold on the Sioux City market at a loss. Other fees paid incident to the Minneapolis affair amounted to $159.50.

In 1930 we were selling a drove of cattle for a man who lives at Amarillo, Texas. The cattle had been pastured in Kansas and when the last shipment of cattle from these pastures arrived at the market we were informed by the owner that he had had a surveyor measure the pasture and found that the pastures were short several hundred acres of what the owner told him there were in the pastures. He ordered us to withhold the payment of pasturage to the pasture owner on the last shipment of cattle, and later on made demand of us to turn the money over to him. Of course, we are responsible to the pasture owner for the remittance of the pasturage, feed from the pasture coming ahead of the mortgage, and we had the pasture owner on the one side demanding us to pay him, and the owner of the cattle demanding us to turn the money over to him. We finally turned the money over to the owner of the cattle and were indemnified against loss of that money by a gentleman on the Kansas City Stockyards. He underwrote the amount of money until such time as it would come up in the courts at 6 per cent interest. The case was delayed in court and it was almost two years before it was settled. The amount of the interest involved was over $700. and we finally got him to agree to take $500. Our firm just paid that amount a short time ago. We asked the owner for indemnity but could not get it. We did not know what the financial condition of the owner of the cattle might be [fol. 1071] at the time the suit was decided in court, therefore we decided to safeguard the National Livestock Commission Company. We did not dream at that time that it was going to take so long in the course of adjustment. We had it underwritten rather than compelling the owner of the cattle to have it underwritten. We have had, due to the building and development of hard-surface roads throughout this territory, a great increase in the number of livestock moving by truck, and we have a great many strange

faces in our office from day to day — has required the use of more caution by reason of that condition than ever before in my experience. There was a time, not so many years ago, that I think I knew by name every man who patronized our organization. Now, I could not begin to keep track of them. The fact of the matter is that we have to expand our filing system, down at the office, from time to time, and buying new cabinets in order to keep listed this great number of new names that come to us from time to time. Just recently a man came in with a load of livestock and he did not go out in the yards except once during the day. I had the cattle to sell, myself, personally. The market was mean, and I did not sell them the day he was here. Coming up into the office in the late afternoon, I told him I was going to carry them over because I thought the bid placed on them was unsatisfactory. He asked me what I was bid and I made a list of the bids on each one of this consignment of six or seven cattle, and he left for home that [fol. 1072] evening. There was a young fellow around the office with him all day and to all appearances was along with him, either as an interested neighbor or relative, and he overheard all the conversation. The next day we sold the livestock and mailed the man his check. This young fellow who was with the old man the first day followed the mail man and took the envelope out of his mail box, getting the check out of the envelope, and he came down to the office the next day, which happened to be Saturday, and there was only one office man in the office when he was there. He told him that he was the son of this man and that the old man had sent him down to get the check cashed. He was afraid of his own banks where he lived and he wanted to take a little spending money out of the proceeds, leaving the balance on deposit at one of the stockyard banks. Our office man strictly should not have endorsed the check, but he did. After the man left the office our office man got to thinking about it and went down to the bank and he found that this fellow had gotten all the money and had skipped. We remitted to the owner another check in the amount of $214.70. That amount is still outstanding on our books and we hope to collect it.

As a result of the increase in truck transportation the checks that we have to write now-a-days in payment of these proceeds are becoming very burdensome, and the tax on checks is quite an item in the expense of the firm. In the

course of a day's time we now write hundreds of checks. This increase in the remittances by check, is due to the [fol. 1073] truck-in business largely and relates mostly to small consignments in trucks. As far as the stealing of livestock and the greater number of instances where dishonesty is the main factor in the hazards of the business, due to things that result from the depression, I think it may be safely stated that in the last few years the tendency has increased. The advent of the truck has also increased it because now a man can take a truck and run a few head from someone's pasture or feedlot into the truck and go to the market in a comparatively short time and dispose of the livestock.

Bank failures put quite a hazard on the commission business. The number of banks is less now but the condition of the remaining banks is something I have no knowledge of. I think the hazard is still present.

We have made a reduction in expense incident to horse-hire in 1931 as compared to 1929. That is occasioned by the fact that we did not buy as many cattle in 1931 as we did in 1929. There was some reduction made in the amount of barn rent since 1929. We own four horses at the present time. In 1931 we owned three. We usually rent two or three horses for salesmen. We have shared in a saving by reason of the reduction in expenses due to lower rentals on horses. We have made some saving — 1931 as against 1929 in our telephone expense. I do not know of any particular cause for it except that the men who use long-distance phone have been thoroughly impressed with the necessity of confining their conversation within the three-minute [fol. 1074] period. Our long-distance toll bill is the main item of that expense. I do not recall offhand any expense that we have been able to eliminate in 1932 as compared with 1929 or 1931. I do not have a comparison of the expenses for the nine months period. It would be difficult for me to say how much more or how much higher any particular item of expense would be. We have not had any reduction in rent or light or heat. I do not know of any reductions that have been made at the market in which we have participated as far as those certain fixed charges are concerned.

MR. GEORGE G. CROSSAM, called by the Government, after being sworn, testified as follows:

Direct examination:

I testified in a former hearing and stated that I was manager of the clearing house maintained by the Kansas City Livestock Exchange. I have remained in that position since the former hearing.

Within the last week or so I have read the testimony which I gave at the former hearing. There is only one thing that I noticed in my testimony, and that is that I have handled more items. It has seemed to me that the livestock has sold in smaller lots and has necessitated more bills. With this exception, my description of the clearing house as [fol. 1075] given at that time is applicable now.

MR. JAMES R. HENDERSON, a witness called by the Government, after being sworn testified as follows:

I testified in the former hearing beginning on December 18 and continuing on December 19. I read practically all of the important points of my testimony. I am still connected with the Moffett Livestock Commission Company. I would not suggest any change in the matter in that testimony, but I do not believe the testimony as recorded reflects the true condition as it now exists, or existed in 1929. The general economic conditions of the country and the financial conditions have been such as to make it very hard for cattlemen to carry on as they did in former times. In 1929 a man could hold his cattle without sacrificing them to care for his financial troubles, but it seems to me that since 1929 farmers and stockmen have had to market their cattle piecemeal, selling a calf or a hog, to raise a little money to pay taxes. All this tends to increase the expense of handling the business, not only for the shippers of livestock but for the commission firms. I had an analysis made of our business for two months in 1929 and for the corresponding two months in 1931. Our truck-in business increased 150%; our car-lot business fell off. Our volume of business was less in 1931 than it was in 1929. It was not a large decrease, but the increase in the drive-in and truck-in business had to come off the car-lot business, which is easy to

[fol. 1076] handle. The 150% increase in truck business over two years ago means a lot of extra work and expense in connection with the handling of it. Formerly we paid 10¢ a head for bringing cattle from the drive-in gate to our pens when we were getting a small volume of business; but as the business increased, rivalry sprang up among these men for business, and they voluntarily reduced their price to 5¢ per head about a year ago. I am not sure, however, but what were paying 10¢ a head up to as late as the first part of 1932. I do not recall just when the change was made, but at present we are paying 5¢ a head for delivery. The 5¢ per head would have been in effect probably all of 1931 and up to the present time. Hogs were 5¢ a head straight but about six months ago our man that delivers our hogs voluntarily reduced it to 4¢ per head up to 40 head, and 2¢ per head above that amount. That is the rate for our company in effect at the present time.

Our firm is now a partnership composed of four partners, namely, H. M. Baker, W. C. Bradshaw, B. A. Metz, and Mrs. Thomas S. Moffett. This represents a change in membership, the change beginning January 1, 1932. Prior to that time we had two partners. There has been no other change in personnel except that we employ extra help occasionally. This change in organization resulted from our taking in our steer salesman and our butcher salesman, and Mrs. Moffett upon the death of her husband, Mr. Thomas S. Moffett. Mr. Bradshaw is our steer salesman. He was [fol. 1077] formerly with the Witherspoon firm. Mr. Metz is our butcher salesman, who was formerly with Elliott-Swain & Company. Mr. Metz had been with our firm about six years before he was taken in as a partner; and Mr. Bradshaw about one year. Mr. Bradshaw came to our firm directly from the Witherspoon firm. Both Mr. Bradshaw and Mr. Metz were with our firm as employees during the entire year 1931.

I have charge of the office management. There has been no change in salary scale of employees of our firm since December 31, 1931. I think the salaries are all the same as they were at the time the former audit was made for the year 1929. The firm has made no salary reductions because reductions were made when the men were hired years ago. Our firm has made no change in its advertising or business-getting policies since my previous testimony. We

have carried our solicitation in the country a little further and more intensive than we were doing in 1929. The occasion for that is to keep up our volume of business. We have to go out and see these customers in order to compete with other markets. This is on account of shipments of car-lot stuff. We are closely related to the St. Joseph and Omaha markets. They have men in our territory all the time trying to divert our trade territory business into their channels, and it is necessary to keep solicitors out and work this territory to hold our business, and it necessarily costs us more money than it was costing in 1929. Our solicitation is all done by our regular salesmen. We have no regular hired solicitor. Our salesmen go out perhaps the [fol. 1078] last two or three days of the week ends. That is the only soliciting that we do. That condition prevailed in the year 1931 and has always prevailed more or less, but as conditions change and business falls off, greater efforts are made to retain it, and necessarily it entails more solicitation and added expense to hold it.

Cross-examination:

Beginning a few months ago an excise tax was placed on telephone and telegraph communications. Our telephone bills for the year 1931 amounted to $683.25, according to the Government audit. This amount includes nothing on account of Federal tax. The establishment of the excise tax in 1932 increased our expense quite materially. Our checks are increasing every month in volume, and our Federal tax during the month of August was about $10 on checks. I think our check will average about $10 per month.

I personally prepared our annual report to the Packers and Stockyards Administration from the books of our company. In 1929 our total commissions amounted to $31,276, in 1930 to $25,985, and in 1931 to $25,769. The same schedule of rates prevailed in 1929, 1930, and 1931. The only thing that would account for a reduction in the total revenue was the decline in the volume of business.

I personally had nothing to do with the filing of the new schedule of rates which went into effect in May, 1932, reducing the commission rates. I do not know whether Mr. [fol. 1079] Baker had anything to do with it. I do not know that any member of our firm had anything to do with it, only I guess it was approved in open meeting by the ex-

change. I was not present. I believe, however, I did hear Mr. Bradshaw state that he had something to do with the formulating of those rates, that is in a general way, by giving such information as he could, but I am not positive as to that.

We have in our office copies of the annual reports submitted to the Packers and Stockyards Administration. We have also a printed copy of the motion for rehearing that was filed on behalf of our firm. According to our report for the year 1931, the total gross proceeds, represented on our account sales and account purchases in money, were $1,870,585.09. Of this amount $1,622,114.69 was represented ty livestock sold and $185,470.40 by livestock bought.

Redirect examination:

There has been some decrease in the price we pay for stationery and supplies since 1929, but I do not believe there has been any decrease in the lithography work and printing. When Mr. Metz and Mr. Bradshaw were taken into the partnership on the first of January, 1932, they each put in capital equal to 28% of $3,000. The bank balance mentioned by me as of a certain date does not include proceeds to shippers. All proceeds had been sent out on the last day of the month. I think I mentioned the month of September. I think I mentioned a balance of two thousand dollars [fol. 1080] and something. We handle our shippers' proceeds through the same account in which the firm's capital is.

Up to the present year Mrs. Moffett devoted more time to her ranches. They are gradually getting their estates closed up, and she has managers on the ranches so that she devotes more time now to the commission business than she did. She is assigned to no particular duty but assists in any way she is asked to and is very helpful about driving our salesmen out. She has her own car and she drives them out into the territory of her ranches and assists in soliciting. She solicits business personally also. Most of her solicitation has been among those customers with whom she was acquainted. She does not hesitate, however, to solicit anywhere or at any time or place. She is quite active and a good business woman. She is in the office every day and in and out of the office. She puts in more hours than anybody in the firm, arriving early in the morning and remain-

ing late at night. She has had a great deal of business in connection with these estates that has kept her there all the time, and she is always ready to help in our office if we need her. She is assisting in there today while I am away. The commission office has nothing to do in any way in connection with her ranch affairs. I do not help her in any way in connection with the accounting or keeping of the records.

Redirect examination:

I had nothing to do with the formulation of the tariff.

[fol. 1081] Recross-examination:

My firm furnished the committee which worked on this schedule a lot of data.

Redirect examination:

The committee to which I refer was made up of the Board of Directors and the Secretary, who handled those matters. I made no personal appearance. I simply furnished such information as they asked off the records.

Recross-examination:

Personally I do not know how the committee was constituted or anything about it.

Mr. E. W. Elliott, a witness called by the Government, after having been sworn, testified as follows:

Direct examination:

I am the same Edward W. Elliott who testified in the former hearing. I am still a member of the firm of Elliott-Swain & Company and sell hogs for that firm. I have been a member of the firm and have been selling its hogs since the former hearing. I have read the testimony given at the former hearing. I know of no change as pertains to the general conduct of the business. The methods employed in the hog yards are identical with what they were when I last testified. I have no statements to make in addition to the testimony formerly given, further than what has been taken care of in the way of reductions in our rates on hogs.

[fol. 1082] I have reference to Tariff No. 3, filed last spring by the members of the Kansas City Livestock Exchange.

We have not been able to reduce office rents. We seldom use a horse. We have not been able to reduce our force in 1932 as compard with 1931. We have the same number of employees that we had last year. During 1931 we made no reduction in the number of employees. We did make a reduction in one man's salary. In 1931 he received $1250 but beginning January 1, 1932, he was reduced $35 a month. That is the only salary reduction that has taken place between 1929 and 1932. None of our expenses in 1932 have increased over what they were in 1931, except the minor increase in postage. Our postage amounts to $125 a year. In 1931 it amounted to $98.76. Our check tax will probably cost our firm $150 in 1932.

Cross-examination:

I am president of the Kansas City Livestock Exchange. I was a director in 1929. There has been a diminution of receipts of livestock at Kansas City since that time. I have examined the figures set forth in Section II on page 6 of the motion as to diminution in gross commissions and in the number of livestock handled during the years 1930 and 1931 as compared with 1929. Those figures are in accord substantially with the diminution in the volume of livestock we handled. The audits of our business made by the Government for the year 1929 and the year 1931 show that the two owners, Mr. Swain and myself, received as a divi- [fol. 1083] sion of profits for our services rendered in the business $8,066.29 and $6,886.31. These amounts include the compensation for actual work in the business by both myself and Mr. Swain. The reduction in the amount is due to a falling off in business. In the meantime I tried to keep our expenses at the lowest possible minima. We have made no expenditures at any time which we did not honestly believe were necessary and proper. It has been our policy for a long time to do as little country soliciting as possible, and we are continuing that policy. I have seen during this period a more intensive competition develop at the market. This has been due in part to the activity of the Producers Commission Association and the other cooperative at the

market. It has been due in part to the activity of packers slaughtering hogs, particularly in Kansas City, in obtaining their receipts direct from the truck drivers or railroads who deliver hogs here. I have observed an increase since 1929 in the volume of direct buying. I understand it to be a fact that the larger portion of the hogs now slaughtered at Kansas City are procured by packers outside the Kansas City Stock Yards. All this has had its effect upon the volume of our business.

We do not engage in the loan business. I understand it to be a fact that many of the firms that have done a loan business in connection with their commission business have sustained losses in connection with these loans in the last few years.

During the last few years there have been changes in the [fol. 1084] price relationships as between cattle, hogs and sheep that affect hogs adversely. Hogs have been selling at prices disproportionately low, about $2 a hundred in my judgment. This price relationship between the species had an effect upon me in connection with the formulation of the new schedule of rates filed, and under which we are now operating. The substantial reduction made in the commission charges for hogs was due to the extremely low prices of hogs on foot. In keeping with the trend of the times and due to the extremely low prices of hogs, the reduction was made. The reduction in hog commissions was greater than those on other species of livestock. In addition, the reduction was prompted by the competitive condition surrounding the hog commission end of the business. This new tariff was formulated by a committee of the respondents who made studies of its application. It was formulated by this committee in consultation with the attorney for the respondents. I had nothing to do with the study made as to the cattle rates, or as to the sheep rates. I am particularly concerned with the hog rates, in so far as the tariff is concerned, rather than its application after it was put into effect. I have had no difficulty in applying this tariff to the consignments of hogs handled by us. It is a simpler tariff than the one it succeeded, for the reason that it is a per-head progressive rate. It contains no prorating charges. It provides a different rate on hogs averaging 130 pounds or less per draft from that which applies to hogs averaging over 130 pounds per head on the consign-

[fol. 1085] ment basis. The purpose of this provision was to permit the per-head progressive rate to apply to lighter hogs often received, from 100 to 140 or 150 head per car. Hogs weighing less than 130 pounds per head in a consignment are usually stockers and feeders, for which there is a market at Kansas City.

In the audit there is nothing shown for automobile expenses, and only $2.60 for traveling expenses. The reason for this is that the one who goes makes no account of it, except in the case of an exceedingly long trip.

I consider the expenditures that our firm makes in the way of payment of assessments and dues to the Kansas City Livestock Exchange are soliciting expenses, or business getting and maintaining expenses, because they go to maintaining an organization that will draw business to the market. In the same sense I mean that the maintenance of the Exchange Building and all the market facilities provides for business, but in so far as the getting of business for our particular firm is concerned as distinguished from the other firms at the market, these expenses do not constitute a soliciting expense. As president of the Exchange I know of no Exchange activities directed toward the procurement of business for any particular firm or organization. In radio broadcasting no reference is made to any particular firm. In my judgment, the Livestock Exchange is a part of the market, essential to its operation.

Our bank balance at the first of 1931 was $3700. We find [fol. 1086] the need of that much cash or its equivalent in the operation of business as it has been running. The Government cost study for the purpose of determining capital for our firm indicates $1500.

Our business has developed very largely into a drive-in business. Within the last year or two there has been more activity in the solicitation of this drive-in business by other firms. Solicitation is effective in many instances in getting additional volume. This has been illustrated in the case of other firms who are competitors at the market. Our firm bought or sold livestock during the year 1931 amounting to $772,168.09 in gross receipts. I do not consider that the cash capital of $3600 or $3700 used in our business during that year excessive in the light of the business we did. I think it a reasonable and necessary

amount and that it would be quite emba-rassing to have less.

A large percentage of our hogs, 90% perhaps, arrive by truck. We have a man who gets to the stockyards about 4:30 or 5 o'clock in the morning. He moves hogs from the truck receiving dock to the sale yard, a distance of from a quarter to a half mile. At 8 o'clock the market opens. The order buyers precede the packer buyers. We sell all the hogs we can to order buyers. Later the packers come into the market and buy the remainder. I do all the selling up to noon and shortly thereafter and then go to the office. My assistant sells whatever arrives after that hour. On busy days he occasionally assists me in making sales during the busy period of the day. We have one yardman. The [fol. 1087] other hog yardman listed is an individual who works collectively for other firms and moves our hogs arriving by truck to our locations. He is paid so much per car. There has been no reduction this year in the amount we pay him. He receives 50¢ a car. Our yardman, as a rule, sells the hogs that come in and are sold after 12 o'clock. Under present arrangements it takes two men to sell the hogs. The yardman helps in the selling and I help in the sorting. I weigh a large percentage of the hogs, due to the fact that it is necessary up to noon, especially during the cool weather, to keep a man at this receiving dock for truck hogs. We have no identical market any two days or through a market period of any one day. I recall an instance where I sold 35 cars of hogs in one hour. I can cite many instances where I worked on one car of hogs until afternoon. At the time you could dispose of hogs in the manner previously stated, circumstances were different from those that prevail at this time. Then we had no sorting to do, no grading whatever. All classes of hogs sold as a unit as they arrived, except that some emaciated hog considered unfit for food might be thrown out. Nowadays a car of hogs, and sometimes a truck of hogs, is graded into many different grades. Market conditions are different from what they used to be. Years ago the buyers in the yard told the packing house how many hogs they were going to buy that day. Now the packers hold the buyers down to numbers, and the buyers sometimes refuse to buy as small a truck load as four or five after they have their [fol. 1088] order filled. The hog market is over by noon

on most any day. It is about a four-hour market. Considering a day as eight hours, the selling would occupy about one half of the time. The rest of a salesman's time is devoted to such office work as he may be able to do—correspondence and work of that character.

If a salesman happens to be also an owner of the business, some of the responsibility of the general exchange matters in the ordinary course of events will fall to him. It is the owners of the business who primarily take interest in and give their time to and their responsibility for the continuity of the exchange organization. The directors of the exchange and the president receive no financial or monetary compensation. Their services are necessary work for a clean-cut market.

Redirect examination:

The diminution in volume of business is a general condition of the market. It is more applicable to other firms than to ours because our business is of a local nature and is not affected so much as that of the other market agencies, in so far as hogs are concerned.

Our cattle business is of a local nature but is not affected to the extent that other market agencies are in respect to receipts. My remarks to the effect that direct buying by packers is on the increase is on the basis of information gained from the general market talk. My statement with respect to losses of some firms on their loan busi- [fol. 1089] ness was also based upon general market talk.

I became president of the Exchange in June, 1932. This was after Tariff No. 3 went into effect. In formulating that tariff, there was what was known as a rate committee composed of four or five members of the Exchange. This committee, at the suggestion of Mr. Gage, requested that I select a committee from the hog department and formulate a rate that would be in keeping with the trend of the times, taking into account the exceedingly low price of hogs on foot. This subcommittee formulated a rate and reported it to the rate committee. I was chairman of this subcommittee. The rate committee did not submit the schedule of rates to a meeting of the members of the Exchange, and then each firm which is a member of the Exchange put it into effect as a matter of course. Those

of us who acted on the subcommittee recommended rates representing a greater per cent. of reduction in hog rates than other committees recommended with respect to other species.. Our purpose was twofold: we wanted to meet competition; we took into consideration the low prices prevailing for hogs at that time. Hogs were selling at around 3¢ a pound and had dropped more than prices on other species of livestock. The prices for hogs are still disproportionately lower than the prices of other species.

I have observed the effect of the lower rates in an instance or two. These instances were of string shipments, that is a number of cars belonging to one man.

[fol. 1090] The activities of the Exchange are for the benefit of all Exchange members. No activities of the Exchange are directed to the particular benefit of any one member as opposed to others. The Exchange is trying to improve the volume of business of all of its members. It is for that reason that the market is kept well policed at all times.

In my opinion, there is as much soliciting done with truck drivers as with owners of livestock, and this solicitation is done largely in the yard. This often has a considerable effect upon the matter of the firm to whom the hogs will be consigned to sell. I have heard of instances where the truck driver was asked advice with respect to whom to consign hogs. I know of no instances where the truck driver is given blanket information to deliver hogs to whatever firm he thinks best. This solicitation of truck drivers has for its object the getting of the truck driver to recommend a certain firm. This method of solicitation is not generally approved on the market. I know of no instances where this solicitation of truck drivers takes the form of recommending particular firms.

I sell the hogs consigned to Elliott-Swain & Company. I am assisted by a hog yardman. The great bulk of hogs are sold by noon. I then go to the office, leaving the hog yardman to sell what few come in after that time. He will usually have a regular hog salesman look over the hogs and give him the market value on them before showing them, as he has been off the market a large part of the day. Another salesman renders him a neighborly service. There [fol. 1091] are occasions on which we might have a fairly heavy run until after 12 o'clock. In that case I remain in

the yards. I make it my business to sell the hogs when there is any considerable volume of hogs to be sold. When I get to the office I look after correspondence with patrons and matters of this kind. I assist in the management of the business. There is only one man in the yard selling hogs for the firm at any time. As set out in my former testimony, I believe we all have our limitations as regarding salesmanship in any species of livestock. What that is, I have never been able to ascertain. I am not prepared to say how many hogs I would have to have in order to acquire another salesman. Our business has never had any very great volume. I have found that I often become incapacitated in four or five cars of hogs or 200 or 300 truck-in hogs. The following day I might be able to dispose of twice as many hogs with greater ease. One can go into the yards and dispose of an unlimited amount of hogs by taking just a little concession, not noticeable to one unfamiliar with the market. I could sell them as fast as I got them, but in my judgment I would not be rendering efficient salesmanship.

As already stated, we hire a man to deliver our hogs from the railroad chutes to our pens. The rate we pay him now is the same as it was in 1931. I do not think we had this service in 1929 but, speaking from memory, I would say that the service was used in the yards in 1929. My recollection is that the charge for this service was higher in the cattle yards than it was in the hog yards. I do not remember the exact charges.

[fol. 1092] Recross examination:

I have stated that there were days on the market when it would be next to impossible for any number of men to sell the hogs consigned to our firm and sell them efficiently, that is, get the full market price. We can always sell hogs or other livestock quickly in the yards and with comparative dispatch if we are willing to take less than the market price for them. A comparison of the time involved has to take the matter of efficiency of the sale into consideration primarily. If I should receive 15 cars of hogs some morning, and in those consignments I should have hogs suitable for Feaman & Nolen, or Corrigan & Soeder, or Rice Order Buying Company, I would, while trading with one of these order buyers, lose contact with the others. In

that case I should be left with that class of hogs for a later market and would have to sell to the packers. Since the packers have been receiving so many hogs direct, a sale to them under the conditions outlined would, in my judgment, be at about 10¢ per hundred lower. There are other firms, competitors of mine, which have entered business since I did and who have, by stressing solicitation, built up their drive-in hog business to a relatively large volume. I do not believe that such firms have any advantage over me in actual selling efficiency.

Redirect examination:

A seller's market nowadays is a rare occasion. I have frequently seen the market open exceedingly active and higher. Thirty minutes afterwards you could not sell a [fol. 1093] hog within 15¢ or 25¢ a cwt. of what they would readily move for. There are times when an active market extends over a period of days. During the war period we had such markets. Under present conditions we do not have. There are days when it is a buyer's market, and the prices offered are less than we consider the real value of the hogs. We work until late in the day trying to get what we consider to be the true value of the hogs. If we are not successful in getting bids at a figure we think advantageous to our patrons, we hold the hogs over until the next day. If we think the prospects of the next day are no better, or worse, we necessarily have to let them go at what we can get for them.

Our firm has never sold hogs for any other firm on the market at a split commission basis. I frequently sell hogs for other firms, but it is a matter of accommodation because its regular salesman may be out of the city or, for some other reason, removed from the market. I make no charge for the accommodation. Firms thus accommodated reciprocate by rendering us the same service.

Recross-examination:

Some of the duties of the management of the firm of Elliott-Swain & Company rest upon me. Prior to 1920 I was a member of another commission firm, in a partnership with Mr. Lennon, formerly a president of the Exchange. I have been active in the livestock commission business at Kansas City as owner or part owner of a busi-

ness for 34 years. I have been connected in one way or [fol. 1094] another with the directorate of the Livestock Exchange for possibly 25 years. So far as I know, I have given general satisfaction to the greater per cent. of my customers. I have customers who have remained such over a period of years. I was in business prior to the organization of either the Farmers Union Commission Company or the Producers Commission Association at the Kansas City Stockyards. On the basis of my experience, I do not believe that the net return to the owner of a commission business is commensurate with what it has been in times past. Present conditions in my judgment, are not conducive to getting young men of ability to serve the apprenticeship in the business necessary to take the places of men who have been long engaged in it.

Since 1929 there has been an increasing tendency to a decentralization of the selling of livestock. It is my personal opinion that the establishment of small stockyards in the trade territory of the Kansas City market, such as those recently established at Springfield, Joplin and Sedalia, Mo., and Parsons, Kans., is a detriment to the interests of the producing public. The establishment of these markets affect the volume of receipts at Kansas City and tends to increase the cost of operation here. I see no factors coming into the situation which would tend to relieve the decrease in volume or to cause an increase in it. It is probable that the relative shortage of the corn crop in Kansas will affect next year's supplies at Kansas City as compared with those of other markets.

[fol. 1095] Redirect examination:

I know of no business in which the rewards of work are as good now as they have been in the past periods since the World War. We are in a general depression in which the diminution of incomes and salaries is becoming almost universal. I do not think that, even in spite of so much unemployment and the difficulty of getting jobs, it would be easier to get men of ability to go into the commission business than it was up to 1929. The reason for this is that they will come and talk with men like myself and others. We know the experiences we are having and we discourage them. If I had a son, I would not encourage him to take up the livestock industry at any stockyard.

I might encourage him to become a producer. I regard the diminished volume of livestock receipts at the stockyards as a more or less permanent condition.

In respect to hogs, there has been a substantial decrease in the personnel employed in the yards in yarding and selling hogs since this diminution in volume started. I cannot give an estimate as to the decrease in personnel since 1929. The hog end of the business at the stockyards is being maintained at this time for no other purpose than to maintain an open competitive market in an endeavor to hold prices up and keep them wholly out of the hands of the packers. Some of the firms have reached such a low point in hog receipts that they cannot make a paying business of it. No matter how few hogs we have to sell, we have to have a salesman to sell them. There is a point below which one cannot afford to maintain a salesman to [fol. 1096] sell hogs, and that is the thought we had in mind when we put in this new rate. It is my understanding that there is a corn shortage in Kansas this year. My statement was that if there is a corn shortage in Kansas, that would affect the supply of hogs coming to Kansas City. I do not know whether there is a shortage or not.

Recross-examination:

The general level of commission charges observed at Kansas City has at no time within the last 20 years gone up or down with the prices of livestock. Tariff No. 2 was established about the close of an era of depression and continued in effect unchanged until a few months ago. The factors influencing us there at the yards, so far as rates are concerned, have been the increase in tonnage of cars and mode of arrival. Many different units arrive by truck and entail additional expense. This was the reason for any increase over any former rates we might have had. When I came to the yards 38 years ago, we were selling hogs for $6 a car and received eight, nine, or ten thousand pounds in a car. There were no sorting and no yard help, since the stockyard company yarded them, fed them, watered them, and took them to the scales and weighed them. Since that time the capacity of cars has increased. There are additional sorting, manipulating, and additional expense, as well as the burden of delivering the hogs from the cars to the pens, and from the pens over the scale.

An entirely different condition now confronts a selling agency.

[fol. 1097] We have had an experience or two in which two 36 foot cars have been sent in as one carload on a single 40-foot car billing. The new rate takes care of a situation of that kind, inasmuch as it applies to the actual consist of the car. With respect to the 10,000 pound minimum, a car of 15 head averaging over 800 pounds would be sold at the 70¢ rate, and the commission would be $10.50. This amount is substantially below what the charge for this consignment would have been under the former rate, namely $15. If you receive a single consignment of 60 hogs, the commission would be 25¢ a head on the first 40, or $10 and 10¢ a head on the remainder, which would be $2. The sum of the two, or $12 represents the commissions on the car. If the same man had another car containing 60 head, all the hogs in this car would be sold for 10¢ each, or $6. The total commission on the two cars would be $18. If a car had only 10 hogs in it, the commission would be only $2.50. If it had 20 hogs in it, it would be $5, The commission on 50 200-pound hogs, or 10,000 pounds, would be $11—40 hogs at 25¢ and 10 hogs at 10¢. Under the former tariff, the commission would have been $13.50. As the number of head in the car decreased below 50, the minimum would decrease under the present tariff; whereas, under the old tariff, it would have remained constant at the minimum.

Since I have been in the yards, the actual loading weights of cars have shown greater variation, and the car as a unit has become a more variable one upon which to apply a rate. [fol. 1098] In connection with the formulation of the new tariff, I found that there had been differences in the application of the old tariff as it applied to carload consignments of hogs numbering 40 and above. I stated that the commission on 50 head of hogs under the old tariff would have been $13.50. We discovered a clause in the old tariff which was construed by some firms as limiting the charge on the 50 hogs to $12, which was the same charge as was provided for 40 head. Under the old tariff, 10 head of hogs in such a consignment were sold free of charge. Under the present tariff the gross charge increase, but after you pass the 40-head mark, the average charge per head decreases. There is no point in the schedule as to hogs

where the average charge per head increases with an increased number to the consignment.

Redirect examination:

In Tariff No. 3 no distinction is made in the commission rates charged on hogs on account of mode of arrival. This is in recognition of the fact that it is the size of the consignment that influences expenses. Small consignments are expensive to handle, regardless of how they come. Five hundred hogs coming in large consignments in full carloads would not be as expensive to handle as 500 exactly similar hogs coming in in lots of 10 and 20. A 40-foot car could contain 100 hogs as a load. I have never had an experience where I had to charge for selling two 36-foot cars of hogs; only the commissions for selling one car of hogs. I have never had an experience with the hog schedule in Tariff No. 3 in which commissions for selling a larger number of [fol. 1099] 130 pound hogs, or hogs weighing over 130 pounds, would be less than the rate for selling a smaller number. In tariffs that have a minimum in them, such a situation could arise. In my opinion no tariff could be compiled that did not have some inequalities in it. When you have a carload minimum, 10 hogs in a car, and only 10, would carry the carload minimum. In such a case the commissions for selling the 10 arriving in a car might be higher than the commission for selling 20 coming by truck.

Recross-examination:

Under the old form of tariff as construed by some agencies, the rate on truck and rail hogs was the same up to 40 head. Under the old tariff as we interpreted it, there was no charge for additional head between 40 and 50 truck hogs. We sold 49 hogs for the same commission regardless of whether they came by truck or rail as we sold 40 head for; and that extends until you reach the limit of carload in numbers. Then we started over again, and if there were two cars in the consignment, the commissions were reassessed on the original basis, each car being a unit. On the second car, the first 40 head would again pay 30¢ per head instead of 10¢, as per our commission rates of today. Under the present schedule, the second carload of hogs would all carry the rate of 10¢ per head; whereas, under

the old rate, the second carload up to 40 head would carry a commission charge of 30¢ per head.

Whereupon the witness, Mr. Elliott, was excused.

[fol. 1100] MR. M. Y. GRIFFIN, a witness called by the Government, after being sworn testified as follows:

Direct examination:

I am the same M. Y. Griffin who testified previously in this case; was then and am now in charge of the local office of the Bureau of Agricultural Economics. No changes of a specific nature have taken place since my former testimony. There are some changes in our broadcasting schedule and some additions to the work but these are of minor importance. The broadcasting program division has been transferred from station KMBC to station WHB and the hours of release have been changed. We have three releases from station WHB, one at 7 in the morning, the next at 11:30 and our next at 12:57. The substance of the releases is practically the same. It has been necessary to make some reductions due to the curtailed time that we have on the station. Since the time of my former testimony we have gathered some retail prices which are forwarded to our Washington office and released in connection with prices at Chicago and New York. We do not release information from our local offices. We have added one meat grader. We now have two graders, one of whom is occupied almost entirely by inspecting and grading of meat and meat food products purchased by other Government bureaus or divisions, such as the Veterans Bureau and the National Soldiers Home, and the other whose time is taken up in grading meat officially for packers or retailers who [fol. 1101] desire the Government grades, choice, prime, good. The carcasses are stamped with the official Government grades. In other respects my testimony at the previous hearing reflects the condition as of the present time.

Cross-examination:

So far as we are concerned here we haven't made any attempt to explain the reason why cattle are now selling at the 1913 level, the price of sirloin steak has gone up from

24 cents or 25 cents a pound in August 1913 to 34 cents and 35 cents in August, 1932. The retail prices of beef are lower in Kansas City than they are in New York and about the same as they are in Chicago for corresponding cuts. The price figures gathered at the different markets are put out by Mr. C. V. Whalen of the Department. We gather our price statistics here in Kansas City from 15 to 30 retail stores. The figures are collected twice a month.

MR. LAURENCE G. TRICKETT, a witness called by the Government, after having been sworn, testified as follows:

Direct examination:

I am the same Laurence G. Trickett who testified at the former hearing in this case. I am still Secretary-Treasurer of the Kansas City stockyards and have held that position continuously since my former testimony.

There has been a material increase in the total amount of business received on our yards by truck and a decrease in the business handled by rail. All these firms take an [fol. 1102] active part in soliciting truck-in business.

In the former hearing I called attention in a general way to the difference in the method of marketing or the increase in direct receipts and the decrease in rail receipts. At that time I stated that volume of business by truck is far more expensive to handle on the part of the stockyard company and the commission firms than the business received by rail. The main factor affecting the cost to the commission firms and to the stockyard company is the small consignment, that is, the small number of head for each consignment. To receive 3, 4, or 5 head of livestock from one shipper by truck is an every day occurrence. In former times one would see from 1 to 10 or 15 cars of cattle by rail. Just as much time and effort and work are required in handling the small number of head, 5 head, as is required in handling the large number of head. Usually there is just as much time required of the commission men to sell 5 head as there would be to sell a large shipment by rail. In the handling of the small lots it is necessary to keep the ownership separated, it requires just as much man power and labor to handle 5 head as it would to handle the larger number of head. So far as the stockyard is concerned there is an additional

expense always in weighing. It cost as much to weigh the 5 head as it would to run the larger number over the scales. It cost the stockyards just as much to operate the scales when weighing a few animals as it does to weight a platform load. Fixed charges are the same. It requires the same [fol. 1103] amount of man power, it takes as much time to put on and take off a small number of animals as it does the larger.

My statement with respect to commission men is based solely on observation. I am not a commission man.

There has been an increase in competition among the operators on central markets within the Kansas City territory. There has been more concentrated solicitation on the firms operating at Kansas City than on the part of firms operating at other than Kansas City. There has been a material increase in direct buying not only in hogs but also in cattle. This competition affects all open markets. Livestock is flowing through channels of direct sales and goes around the open markets. Those two factors have increased materially since the last hearing in 1929. There has been direct buying of cattle in what is known as the Kansas City economic area including Kansas City, Kansas, North Kansas City and outlying suburban districts. Most of the direct buying of cattle takes place on the Morris and Prospect feed yards. This has developed since 1929. The Morrell Packing Company at Topeka, Kansas, formerly the Wolff Packing Company, is buying direct practically all of the livestock it slaughters. The hogs bought direct by Swift & Company pass through the Kansas City stockyards. The stockyard company handles very few direct cattle or direct sheep through its yards. Another factor of competition which has sprung up recently is the so-called small stockyards or concentration points located on various railroads. Examples of this are to be found at Sedalia, Springfield, [fol. 1104] Joplin, Atchison, Parsons. These small concentration yards have taken away from the open market quite an amount of livestock that would come by rail or truck to the open market. I should say that a large percentage of the livestock concentrated at these yards would come direct to the packers.

A change has taken place with respect to the through billing of livestock. This change is due to a decision by the Interstate Commerce Commission in Docket No. 17,000. Prior to that ruling the Kansas City market as well as all

markets had the privilege of through billing and change of ownership. Since that ruling the Kansas City market does not have the privilege but this privilege does exist at the so-called feed yards so that livestock stopped at Prospect or Morris enjoys the privilege of change of ownership and destination while that sold on the Kansas City market does not enjoy this privilege. This naturally decreases the volume of business on the Kansas City market and affects the price of livestock to the producer. In my judgment this is very detrimental to the livestock industry as a whole because it materially affects order buyers.

"Q. Does that affect all species of livestock?

"A. I think it does, but I think it maybe is being used in what is known as cattle at the present time.

"Q. Are all species of livestock fed at the Prospect and Morris yards, or only cattle?

"A. Only cattle.

"Q. I say, are they for all species or just the cattle?

"A. I guess so, I know they feed sheep, and I know they feed some hogs."

[fol. 1105] Since 1929 there has been a reduction in the charges made by the stockyard company to the commission men for the hire of horses. On April 6, 1932, our charges for horse hire were reduced from $30.00 a month to $27.50 per month. Our charges for feed for horses owned by outsiders and housed in our company barn were at the same time reduced from $22.50 a month to $20.00 a month. The daily horse hire was at the same time reduced from $2.00 a day to $1.75 a day. There has been no reduction in other charges made by the stockyard company to the commission men. There has been a reduction in feed charges to shippers of livestock since 1929. We have no plans for any further reduction in charges made to commission men.

Government Exhibit No. 108-J

Government offered in evidence Government Exhibit 108-J, being the 61st annual livestock report for the year ending December 31, 1931, of the Kansas City stockyard.

Government Exhibit 113-E

Government offered in evidence Government Exhibit 113-E, which consisted of mimeographed sheets showing the

receipts by months, by firms, of market agencies and others during the year 1930 at the Kansas City stockyard.

Government Exhibit 113-F

Government offered in evidence Government Exhibit 113-F, showing the same information for the year 1931 as is shown for 1930 in Exhibit 113-E.

[fol. 1106] Government Exhibit 113-G

Government offered in evidence Government Exhibit 113-G showing the same information by months from January to August, 1932, as is shown for the years 1930 and 1931 in the exhibits mentioned above.

Government Exhibit 108-K

Government offered in evidence Government Exhibit 108-K, which was a monthly statement of the receipts of shipments of livestock at the Kansas City stockyards for months from January to September, 1932, comparative with corresponding months for the year 1931, compiled from the records of the Kansas City Stock Yards Company by Witness Trickett. The receipts shown include livestock sold on the yards, through shipments, and direct shipments.

Cross-examination:

The receipts of various species of livestock for the years 1922 and 1931 are as follows:

	1922	1931
Cattle	2,443,449	1,665,445
Calves	539,595	292,219
Hogs	2,654,959	1,336,594
Sheep	1,574,217	2,244,011

There has been a diminution of receipts as between 1922 and 1931 in all species except sheep. As compared with the year 1922 all subsequent years except the year 1923 and 1924 show material decreases in all species except sheep. As to cattle, calves and hogs, there has been a progressive decline in the number of head received since the [fol. 1107] year 1924. Our company has conducted its operations on the basis of a continually diminishing volume

of receipts in these species during the period between 1924 and up to the present time. Our unit cost of operation has increased materially. It is impossible to readjust overhead. About the only expense within the control of the company is the labor cost. During this period the yardage charge on sheep has been 8¢ per head, the yardage charge on hogs 12¢ per head, the yardage charge on cattle 35¢ per head. These charges have remained unchanged throughout the period I have mentioned. The increased revenues incident to the increased number of sheep received do not offset in any substantial degree the loss of revenue collected on the decreased number of cattle, calves, and hogs. The greater portion of our revenue derives from charges on cattle, calves, and hogs. The commission firms operating on the market have had difficulty also in adjusting themselves to this constantly dimin-shing total volume of livestock receipts. In my judgment one of the biggest hazards in conducting both the stockyards and the commission business is a requirement to have facilities and personnel to meet the peak volume of business. The stockyard company and the commission men must have the men and facilities on hand, if the volume does not come in there is no way to govern cost. There is no way to ascertain beforehand just how many receipts of any species will come in to a commission firm or to the stockyards. The fact that the [fol. 1108] Kansas City market is a large stocker and feeder market accentuates the peak receipts in the fall. The fact that the Kansas City market is a larger stocker and feeder market accounts for a greater variation from its normal than exists at other markets such as Chicago. This increases operating costs.

The market agencies and the stockyards company are, in my opinion, allied in their activities and expenditures and both are compelled to spend more and take a more active part in getting business. (With respect to the matter of advertising the following question and answer appear:)

"Q. In the course of the evidence that has come into this hearing, both the present hearing and the former hearing, I have noticed a substantial variance in the amount of gross income of different firms or market agencies as applied to business-getting and maintaining effort, and have observed that in the great majority, if not all, of the instances, where that percentage of gross income applied to business-getting

and maintaining expense was low, either that particular agency's business showed no increase whatsoever, but it ordinarily showed a diminution in volume greater than the average for all the agencies. As a business man and with your knowledge and experience in the business, how would you account for that situation?

"A. Well, as I understand your question, Mr. Gage, in accounting for the decrease, or, perhaps, in an increase in business to the firm who did not participate in the activities [fol. 1109] of getting business, I would say that it was entirely due to the fact that they did not spend money on solicitation and the fact that they maintain any stability at all in their business would be entirely due to the fact of personal relationship or personal friendship with the livestock producers who ship to that particular firm. Such action on their part by not soliciting and helping out would diminish the entire volume of business, on the market because they would fail to play their part in getting this business. The firms that have gone out and increased their business have done so by very active work and time spend in the field and expenditure of money, and, as far as our company is concerned, it has been our judgment in the last two years, you might say, 1930, 1931 and 1932, that we are required to put great-- efforts forward than we ever did in order to get volume or get business at our market, because of these outside competitive factors."

There never has been a time in the history of the company when it was as necessary to get out and work to maintain the existence of the open market as it is today. If all the commission firms at the stock yards should reduce their business getting efforts and expenditures to the relatively low level of some individual firms, there would follow a decided effect on the volume of receipts coming to the market. It was the opinion of the management of the stockyards company that the commission agencies acted unwisely under all the circumstances in discontinuing their expenditures on account of the market paper to be sent free to many [fol. 1110] of the patrons of the market. We thought it was unwise and false economy to discontinue the paper.

In the year 1929 the business getting and maintaining, the soliciting, costs of drive-in business were relatively low. Since that time a substantial change has developed and it has become necessary to expend a considerable amount of

effort in getting that class of business. It is my understanding that practically all of the market agencies are making an effort to increase that class of business.

It has been the purpose of the stockyards company in the relationship it bears to the American Royal Livestock Show to advertise throughout the adjacent trade territory and attract attention to the Kansas City market. Our company devotes a considerable amount of effort to the maintenance of the high standard of the annual livestock exhibition. Our company manages the show and the different market agencies take an interest in it. The show is beneficial as far as volume of receipts is concerned and tends toward the improvement of livestock conditions in the trade territory tributary to the Kansas City market. Our company spends effort and money in attracting buyers to the Kansas City market. If we have a buying demand it reflects itself in the volume of business handled at the market and reacts beneficially to the livestock producer in the price he obtains for his livestock. We have a keen interest in the welfare of the livestock producer and a very high interest in attracting volume of business to the market. Our [fol. 1111] efforts consist in mail solicitation, personal solicitation with eastern buyers, information as to the market. We encourage the order buyers in Kansas City in their effort to attract prospective buyers to the Kansas City market. We try to make buying conditions as favorable as possible for buyers. This is one of our most important services.

Redirect examination:

I think that as long as the difficulties about which we have been speaking remain and as long as direct buying is with us, we have a serious problem as to volume of business. If the price of livestock gets better the volume might increase to some extent, but you have to cure these other evils before there will be any material increase in volume. I cannot say that any change which has occurred in the livestock situation generally since 1929 has tended to offset the difficulties described. Market agencies manifest their interest in the American Royal Livestock Show through financial support and the purchase of tickets, their very active work in the boys 4-H Club, the vocational work done during the time of the show, through advertising the show

and by sending out pamphlets with their mail. They respond splendidly in their efforts in behalf of the American Royal Livestock Show. Our company does not prepare what can be termed a budget. We have before us every year the expenses from the time the company began. We do not allow any specific amount for any particular item for the subsequent year, but all the information we have from the operation of our yard for a period since 1913 is before [fol. 1112] us. Those items are watched very carefully. The amount for specific items fluctuates up and down. We place no maximum or minimum upon the amount to be expended for business getting and maintaining. The management exercises its judgment as time goes on in accordance with the necessity or the occasion.

Redirect examination:

The peaks in livestock receipts are not so noticeable now as they used to be. That is due perhaps to the development of good roads. There are still peaks but they are not as great as they used to be.

CHARLES H. HAREN, a witness called by the Government, after being duly sworn testified as follows:

Direct examination:

I am the same Charles H. Haren who testified formerly in this proceeding. I told the same position with John Clay and Company that I held then and have held it since the former hearing. Within the last several days I have read my testimony given at the former hearing. There are no changes in the testimony I wish to make, but there are conditions which have arisen since that time which that testimony does not reveal. There have been some changes in the nature of sheep receipts in that there has been an increase in the proposition of sheep trucked in to the market. There have been some changes made in freight rates and freight privileges. Hazards have been added to the loan business. There has been a considerable change in the [fol. 1113] activity of some loaning agencies loaning Government money. All these have tended to decrease receipts at this market and some of these changes have affected the

market as a whole and some of them have affected the firm with which I am connected. The changes in freight rates relate to the matter of the through billing privilege and also to changes in actual freight rates from some points in the territory from which this market draws its supply. These freight changes have favored other markets as compared with Kansas City. The increase in the proportion of sheep arriving by truck has added to the difficulty of handling sheep.

I took some part in making up the sheep schedule as set forth in Tariff No. 3. We were advised by our counsel after the last hearing that the rates under which we had been operating contained some features which possibly could not be defended in court and we tried to arrive at a rate which we thought would be equitable.

Cross-examination:

The new tariff relieved some of the inequities that existed in the former tariff and reduced revenues. I had reference when I spoke of discriminatory features in the old tariff to the fact that it applied as to rail consignments a flat charge to the single deck carload and to the double deck carload, irrespective of the number of head in the car.

This year when I made my trip to Utah I found that a considerable number of our old customers had borrowed a dollar a head on their lambs through the Inter-Mountain [fol. 1114] Marketing Association and that these loans had been made with the consent of the Wasatch Livestock Loan Company and with their help. I was told that in some instances borrowers would be required this year to ship their lambs, if they came to market, to a commission firm who was associated with the National Livestock Marketing Association. Some of the borrowers were of the opinion that they could do as they had done formerly and ship their lambs to whom they pleased, with the understanding, however, that if they shipped to any firm on the terminal market other than one connected with the National Livestock Marketing Association a penalty of 5¢ a head would be assessed. I made inquiry of the Wasatch Livestock Loan Company in Salt Lake City and was advised that this year it would be compelled to restrict its borrowers to ship their lambs to a firm connected with the National Livestock Marketing Association. The statement was made that if this

arrangement was violated the loan would probably be called. Since that time many of those sheep have been marketed and have been consigned to a firm connected with the National Livestock Marketing Association. A great many of these men are old customers of the firm of John Clay and Company and previously of the firm of Clay, Robinson and Company. Last summer sheep producers in the west who had obtained money from Government supported loan institutions shipped their lambs to John Clay and Company and paid the 5¢ penalty, instead of making the consignment to an affiliate of the National Livestock Marketing Association. This year they are not going to be allowed to ship [fol. 1115] to any marketing agency other than one affiliated with the National Livestock Marketing Association.

On a double deck car of sheep with the minimum weight of 20,000 pounds a differential of over $36 in favor of Denver as against Kansas City exists. This is over twice the average commission charges on a double deck car of sheep. Receipts of sheep at Kansas City during the first 9 months of 1932 as compared with the first 9 months of 1931 show a decrease of 247,549 head. Receipts at Denver for the same period show an increase of 606,462 head. The top price paid for lambs in Denver yesterday was $5.50 per hundredweight and the top price paid in Kansas City was $5.40 per hundredweight. Denver is some 600 or 700 miles farther away from the consuming and packing centers that absorb mutton and lamb than is Kansas City. Prior to the establishment of this differential I do not recall in all my experience a time when lambs sold as high in Denver as they did in Kansas City. The Prospect yards and the Morris yards enjoy the privilege of consolidation of consignments as well as change of ownership on through billing. When we sell sheep at the Morris and Prospect yards we have to take our buyers from the stockyards here out to those yards and we have to take our sorters out there. This necessitates our furnishing a means of transportation for the buyer, the showing of the sheep, and the furnishing of a means of transportation for our sorters and salesmen. In addition it takes time from our work here in the yards. [fol. 1116] I have never attempted to take more than one buyer out at a time. I do not believe that they would consent to it. We have to find the buyers and take them out there one at a time. We have to hunt them up.

In connection with the operation of John Clay's business, we try to keep all of our expenses for every purpose as low as possible, consistent with efficient management. The owner-partners take a personal interest and devote personal time and attention to the business. The loan activities of John Clay and Company contribute materially to the volume of receipts. The partners of the company frequently come here personally to observe the operations. In the formulation of the new tariff I rendered assistance and made tests of various forms of tariff in order to ascertain their effect. I worked several nights and several days trying to devise one that looked like it would work. I found it extremely difficult to formulate a tariff that would remove inequities in the commission charges as set forth in the old tariff without producing a change which I thought was too radical. I do not contend that even the present tariff removes absolutely all of the inequities that existed in the old tariff.

Redirect examination:

The custom of ordering 40-foot cars and getting 36-foot cars and of charging on the same basis as if they had really been 40-foot cars brings about unfairness both to the commission man and to the producer. It would be unfair to the shipper who did not get the advantage. To illustrate; [fol. 1117] a shipper who ordered two 40-foot cars and got two 36-foot double deck cars and one 36-foot single-deck cars would be charged according to the billing for selling two cars only. Another shipper who ordered two 36-foot double-deck cars and one 36-foot single-deck car would be charged a commission for selling three cars. That would be somewhat in the nature of a discrimination as between shippers.

A tariff based on a headage basis with some limitations such as are set forth in the present tariff would, in my opinion, relieve the situation. In lieu of anything better to offer I offer the present tariff. I was not a member of the committee who drew up the tariff. I acted in an advisory capacity with them.

Recross-examination:

The tariff ordered into effect by the Secretary of Agriculture provided a charge of 20 cents per head as to drive-

in sheep up to 65 head with no increase above 65 head until the consignment reached 125 head. That in my opinion would be a very apparent inequity. We should not be compelled to sell 119 sheep for the same price as we sell 65 and neither should we charge the owner for selling 65 as much as we charge the man who owns 119.

[fol. 1118] MR. JOHN W. MURPHY, a witness called by the Government after being duly sworn, testified in substance as follows:

Direct examination:

I am the same John W. Murphy who testified at the previous hearing on December 18 and 19, 1930, my testimony extending from page 1386 to page 1459 and page 1507 to page 1594 of the transcript. I am still connected with the Bowles Livestock Commission Company and in the same capacity as when I previously testified. There are places where there are several changes to be made in my previous testimony. The main one is in the decline in volume of our business at Kansas City. Over the period of the last two years the decline in volume as represented by our own figures amounted to a little over $7,000 in gross commissions. I am comparing 1929 against 1931. A decline in net income would naturally mean a decline in salaries. We try to cut our overhead and all other expenses as much as possible. To the best of my recollection we have made about three reductions in salaries and they started along in the first of 1930. I am not able to state the approximate date of the reductions. The reductions will vary from 15 to 35 per cent. The largest reduction was made about the first of 1931. I don't think there have been any reductions made since the fall of 1931. Our firm still has the same personnel that it had when I previously testified, with the exception of one or two yardmen. Two of them were transfers in which we let one man go and hired an-
[fol. 1119] other. The other one was what we call an extra man. There has been no reduction in personnel since the first of 1932. I imagine our advertising expense has been reduced. That is because it has cost us less and we have reduced the amount of it. I have considerable control over

the advertising policy of our firm. We maintain quite an extensive mailing list, and have instructions with our advertising man, and all in the office that come in contact with this mailing list that we try to keep it up to the minute as much as possible both by inserting any new names and taking out the old ones. During this period of retrenchment we have made a greater effort than usual to pare that list down to an active list. It is to that list of customers that we send our market circular in season. The growers are in such financial condition that they cannot stand it any longer and the corn belt feeder is in the same financial distress, and he cannot buy anything. They have come to an agreement where these cattle could be fed on a gain basis or a stipulated price. We have been doing a little direct advertising for some of that business, but it is not very expensive. We are getting some results from it, but the volume of business we are losing right here at the Kansas City office due to that is going to be tremendous before the year is over. The tougher the going gets, the harder a fellow will go after the business, and while our cash outlay for advertising may be more or less last year than it was the year before, we are giving more time to it both directly [fol. 1120] and indirectly and through personal correspondence. With less volume we might have a little more time to devote to that angle of the business, but regardless of that, if we are going to stay in, we have got to go after it. I have made more country trips this season. We have spent more time on it, under greater difficulties, than in past seasons.

Another change has been in the volume of our hog business. It has been going direct to the packers. Formerly we had a pretty good hog business and with us it is practically a thing of the past. While our drive-in business has increased, it has not increased anywhere near enough to cover the lapse that we have had in consignments. Naturally that means quite a loss in revenue as far as our livestock business is concerned. Another thing is the through movement of cattle through this market, which is a loss of revenue. It entails a lot of work that we really derive no benefit from.

I am fairly familiar with the headage schedule contained in tariff No. 3. In a sense I assisted in the preparation of this schedule. I think that a good many took part in it. We used it as a means to an end to make an equitable re-

duction in commissions. I offered some suggestions. I have paid more attention to the cattle, but I have observed the schedule as a whole. We have found it satisfactory. I don't think it places an undue burden on one class of consignments as compared to another.

Cross-examination:

Some applications of different forms of suggested tariffs [fol. 1121] were made by our firm before the one was approved by us. We consulted with other representatives of different respondents during the period that the tariff was under discussion. It was also discussed with the attorney for the respondents. It was our purpose to formulate a tariff which was more equitable as between consignments containing different classifications within each species and also a tariff that would result in some gross reduction to the shipper.

The Bowles Commission Company is not a separate concern from the Bowles Commission Company that operates at Chicago. Our finances are separate but we are generally affiliated and work together. Both J. P. and John H. Bowles at Chicago assist us in handling our business. The Bowles brothers have been in the commission business 32 years. I have been in the commission business 24 years. Before that I was connected with a packer for seven years as a buyer. From the Government audit, Exhibit 14-12, in the original hearing, and the audit for the year 1931, it will be seen that despite the economies which we have practiced and the salary reductions which we have made and the lower drawing accounts of owners, we still met a loss in our operations for 1931. We gave no free subscriptions to the local market paper in 1931. The item in the audit covering market letter refers to our circular. On account of the more intense competition, we have had to increase our effort to hold business and maintain volume. In some instances that has involved additional expenditures. The [fol. 1122] increased expense for advertising, as shown by the audit for 1931, as compared with the audit for 1929, was incident to our greater effort to hold and get business.

In my judgment and from my long experience in the business with the present conditions of competition prevailing that I have testified to, the rendition of capable, competent, efficient and trustworthy service will not suffice altogether

to hold business and maintain volume. We are in a public business and we have got to keep in front of the public and it naturally requires a specified amount of advertising either in one form or another. We are in a highly competitive business.

The tremendous decrease of hog rail shipments would be one factor that would enter into the considerations that originated the present hog schedule. To build that business back, they would have undoubtedly to put out some inducement that they had not done previously to try to draw that trade back to the market. Another thing is probably the value of the commodity itself, it has depreciated so much. Hogs have depreciated in value to a greater extent than cattle. There was a time in the commission business at Kansas City when the hog business was rather the back log of the entire structure. There was comparatively a greater degree of profit in handling it. The opposite is true today. That was partly due to the very intensive development of direct buying campaigns and off market purchases of hogs by local packers. That competition has [fol. 1123] grown considerably more intensive in the last three years. It now applies to truck-in consignments of hogs as well as to rail consignments. The element that confronted those who formulated the hog schedule was altogether the competition element, and trying to draw more of that business back.

There used to be throughout the surrounding country, at country points, stock buyers who purchased odd lots of hogs where farmers had less than carloads to sell at one time and they consolidated them and shipped them into the open market. Frequently these men would send in two or three carloads at a time. These stock buyers have practically gone out of business, or if not out of business have become buying agents for packers as to hogs.

I find that falling markets and declining prices make it generally more difficult to dispose quickly of my consignments. It has been particularly difficult to dispose of grass fat cattle in recent years. The change has been very noticeable in my length of time in this business. I think it is in the worst shape that I ever saw it. Twenty-five years ago I have seen packers buy as high as 40 or 50 cars of grass cattle in one string. Today it is almost impossible to sell any one packer four or five cars of any one particular kind

of grass fat cattle. This fall it was the exception where that many of one kind was bought at one time. There were days here this past season where grass fat cattle were almost unsaleable to some of the packers unless we wished to [fol. 1124] let them mark their own ticket on them.

When I speak of selling cattle or any other species of livestock, I mean selling them at the highest obtainable market price. My firm had four salesmen and buyers during the year 1931. They worked all through the full year. They were constantly at the market during the selling period except for country trips. We could not have dispensed with the services of any one of them or any part of the services of any one of them except at a loss to the concern. That loss would apply more to the customers. I imagine that the customer would have lost more than the compensation of that salesman in the price received for the livestock.

The usual market hours with respect to cattle are from 8 o'clock to 3 o'clock in sales made to packers. We sell to feeder buyers any time after 8 o'clock. Such sales generally cease between 3 and 4 o'clock. The rest of the time of the four salesmen is employed in handling correspondence about sales. When occasion demands it, they do a certain portion of the yard work, taking care of cattle that have been bought after market hours. In the fall of the year, we generally always have somebody out at the end of the week on appraisal trips in the country. During the spring and summer, we generally try to keep a man or two busy, either soliciting new business or making appraisals. I will venture to say that the bulk of our soliciting is done on request. Is done primarily during the latter part of the [fol. 1125] week when it is most convenient. The market is open, of course, every day of the week, but there are generally five market days and four in which the bulk of the volume is handled. Those days are Monday, Tuesday, Wednesday and Thursday. Frequently, we have a substantial volume on Friday. The distribution between the various days is not the same in any two weeks.

The competition of the Producers Commission Association, or its activities in the cattle loan business have affected my firm since 1929. The Texas Cattle Raisers Association is one of the affiliated organizations or subsidiaries of the National Livestock Marketing Association. I can

give specific instances where the normal flow of our customers' cattle to our firm for marketing has been affected by this competition.

The fact that the courts here in Missouri have compelled the Exchange to extend all of its market facilities on equal terms to both members and non-members has not helped us any during this period of diminishing receipts through economies that might result from consolidation of firms or decrease in the number of market agencies. We have absolutely no control over the right of newcomers to enter the business at the market. Anyone can come down there now under the Packers and Stockyards Act regardless of his financial ability or his standing. We are compelled to do business with that party whether we like it or not. All that is necessary is that he give a bond. If firms wanted to consolidate so that owners would do a larger percentage of the [fol. 1126] work, thus releasing a number of employees, those employees could immediately set up another firm if they saw fit. That has militated against the ability to adjust the personnel of the Exchange to diminish total receipts. The intensive effort of the affiliates of the National Livestock Marketing Association has resulted in the necessity for more extensive effort on our part to retain our business.

Redirect examination:

I am still a director of the Exchange. As to how the formation of this tariff was handled, it was an open meeting to any one and they all worked together as the best means to an end. Any one's suggestion was acceptable to the few that were trying to establish an equitable rate. At such meetings as were had, the Producers Association and the Farmers Union Commission Company were asked to sit in. These meetings were held some time early this year. Some one of the Board of Directors would generally be the chairman. I do not recall that all members were present at any one time. The Producers and The Farmers Union were present at numerous meetings. I imagine that it was the idea of those meetings to arrive at some basis on which all could agree as to the rates to be charged. It was my understanding that any one could make a suggestion in regard to the rate. I do not recall who drew up the tariff finally filed by our firm. In working on this new tariff, the

only definite figures which I had on the cost of handling cattle and calves were what I could see from our own figures [fol. 1127] in our own office. We did not figure out how much it cost us to sell a car of cattle or a car of calves. We did not attempt to figure out costs and allocate them to the different classifications. It looked like the commission men had to do something, either increase their volume or cut down their overhead and eliminate whatever expenses they could. Everybody based it on volume of business which they had been doing in previous years. I think you will find the old-line concerns here have done an equally fair amount of business over a period of time. They probably based it on the opinion of what reduction they could stand and still maintain our service and selling ability at 100 per cent. I do not think any firm presented unit cost figures showing what it cost to sell a carload of cattle and calves according to these three classifications as to weight. We had no definite line on how many head of our receipts would fall under these classifications according to weight when we put this tariff into effect.

We are working on the same salary schedule that we had at the close of 1931. We contemplate saving anything and everything we can, but I have nothing definite in mind at this time in the way of contemplated reductions. We have to do a specific amount of advertising. If we do not keep the name of Bowles in front of the shipping and farming and ranching communities, as well as the varied livestock producer industries, we probably would have a pretty short life. Service alone will not do that, although I consider service the most essential factor. Outside the character of [fol. 1128] service rendered, I do not think of any more effective method than direct contact and personal correspondence. By direct contact I mean both trips to the country and visits in our office.

The prices which salesmen get for the same class and grade of cattle at any given time naturally vary with the salesman's ability. First he has to be a judge of the cattle he is selling and he also has to be a judge of the buyer. There will be a variation to some extent, and once in a while to a large extent. Not only the selling element but also the buying element enters into that variation. If there were only one order for a class of cattle which I have, and there were other cattle of the same class on the market, and I was

fortunate enough to catch the order buyer first, those who had the same grade of cattle would probably have to take a price in reduction, depending on the matter in the market.

We have three salesmen that are handling cattle, and each of them has devoted a life to the business. There are people there that I could sell cattle for that maybe my assistant could not, due to the personal confidence that that man may have in me, and that same may hold true with both the other salesmen. They do business with us because they have confidence in us, and if we are continually changing our line of salesmen from one concern to another, it is only natural that it is going to be expensive, also to the man that is following that particular salesman. He gets [fol. 1129] out of his line of work, and if he is with another concern, he has to start over. We deem it expedient to hold on to a good man, both for our own good as well as our customers; and from the standpoint of our own good, it means that while we hold on to him, we hold on to a certain volume of business. If we could have increased the volume of our business, we could have handled it; but I would like to add that due to this decrease in volume, any one connected with the Bowles concern has devoted considerably more time to being on the job and in the business than they did previous to 1929 or 1930, and not through a matter of choice either, but because they had to. The requests for appraisal trips come largely from the party feeding fat cattle in a radius of 200 miles. That applies to our winter, spring, and early summer business. Occasionally during the fall months we have specific requests from Texas, New Mexico, and Colorado ranchmen to call on them, if we will, and give them an estimated idea of what their livestock would bring on the present market. It has happened that the firms at the Kansas City market have spent considerable time in looking after pasture contracts and looking after the cattle after they are on the pasture, and then they might not get the livestock when it is finally marketed. That could happen even though the Texas Livestock Marketing Association never existed. That association is composed of producers of livestock. Referring to the 13,000 or 14,000 head of cattle owned by R. G. White, I would venture to say that 90% went through to the Illinois feed lots. The cattle were handled on this market by the [fol. 1130] Producers Commission Association.

There have been consolidations effected at the Kansas City market in recent years. I meant that the Exchange would be forced to admit market agencies to the use of the facilities of the Exchange on equal terms. It could not be forced to admit anybody to membership. Those facilities would be the clearing house, and hog dockage, for which there is a stated charge. This business is founded a great deal on personal service, and while that consolidation as far as overhead expense is concerned might promote a saving from that end, it might be handled also by a class of salesmen selling cattle that the cost in their operations or their selling ability would more than overlap what incidental savings they might make in their consolidations. I think circumstances in the last three years have forced more consolidations than we had in the seven years previous on this market. I went into the business because I thought I could show better financial results. One would have to consider both the possible business which he can get and the rates under which he is going to operate.

Recross-examination:

It is the turnover under the rates that determines gross income and eventually net return. The rate itself might be detrimental in being either too low or too high. Competition for business on this market has been very keen, and it has been a tremendous struggle for even the old firms to maintain themselves.

[fol. 1131] In referring to the situation arising out of the inability of the Exchange under the existing law to control the number of firms on the market, I had in mind the situation that involved Dell Hubbard, who was formerly a member of the Exchange and after being unseated went into business as a nonmember and asked for these services of the Exchange, concerning whom there were certain legal proceedings brought under the Packers and Stockyards Act. These clearing house facilities are extended to nonmember firms on the same terms as to the basis of compensation that the Exchange members pay for those facilities.

If a salesman has a lot of consignments on his hands of different qualities, he would be handicapped. He would probably have too many different classes of cattle to handle. If he were a fat-steer salesman, he would be devoting his time and energy to the selling of that particular class of

animal. An up-to-the-minute salesman is apt to know, or have some idea, where the buyer is and who is most likely to have the order that will fit the exact quality and weight of cattle that he has in his pen. A salesman who had only a single consignment might have filled the order before the salesman with the dozen consignments could have done it.

The reduction in the number of salesmen in my firm or any other firm may readily involve a reduction in efficiency. That might mean a margin in the price of several times the commission.

Redirect examination:

Producers are going to take the best that they can get. [fol. 1132] A good going concern that has been handling a fair amount of business year in and year out over a period of time, if it is on its toes for business, is going to have a man capable of taking care of the different classes of cattle. If they do not get sufficient volume to employ those men properly, they could be faced with the necessity of remedying such a situation. Compared with two years ago, it requires a considerable more time to sell cattle on account of the declining market which we have had. There have been days out here when we have not had a market at all after 10 o'clock in the morning. Sometimes we have had to take the prices that these fellows mark on them or leave our cattle unsold. If we are unfortunate enough to get caught in that situation, the possibilities are that they would take less for the livestock the following day. That is due absolutely to the falling prices in the livestock. I do not believe anybody has been blessed with enough business down there in the last couple years to worry about the volume.

Whereupon the witness was excused.

Mr. George W. Hobbs, a witness called by the Government, after being sworn, testified in substance as follows:

I am general manager of the Farmers Union Livestock Commission Company at the Kansas City market. I have been general manager of the concern for approximately four years and have been with the firm altogether approximately twelve years. I have testified previously in this

case, I recognize Government Exhibit 103 as being a copy [fol. 1133] of Tariff No. 4 filed by my firm. There has been a change made in our tariff since that tariff was filed. The tariff filed prior to Tariff No. 4 was the same as the tariff of the Kansas City Livestock Exchange filed effective May 23 as shown in Government Exhibit 101. I have a copy of the tariff filed subsequent to Tariff No. 4.

Government Exhibit 103-A

Government Exhibit 103-A became effective October 10 and is now in effect. Compared with the tariff filed effective June 18 there is a decrease in commissions mostly on hogs. In the former tariff the rate was 20 cents a head with a minimum of $10.00, each additional head was 20 cents a head not to exceed $12.00 for a single-deck. Under the tariff effective October 10 the rate is still 20 cents a head up to 40 head inclusive with 10 cents a head additional not to exceed $12.00 for the hogs in a single-deck car. Under the tariff of October 10 there will be no service charges on hogs. In the tariff of June 18 the minimum charge on a single-deck mixed car was $15.00. We have reduced that minimum to $12.00. On a double-deck car the minimum was $18.00 and now is $15.00. The per head rate on drive-in cattle was reduced from 70 cents to 65 cents, and calves from 35 cents to 30 cents per head. The number of head has been changed in the consignment of calves received from 70 in the former tariff to 75 in the later tariff. In the former tariff an additional charge of 50 cents per head was made on over 50 head and the later tariff a charge of 25 cents a head is made. The maximum has been changed [fol. 1134] in the later tariff to $17.50. On hogs received by truck the charge is 25 cents per head and the maximum charge of $13.00 up to and including 60 head with 20 cents per head additional above 60 with a maximum of $17.00. The later tariff reads practically the same except the maximum on any one consignment by truck is $14.00. In the later tariff it now reads 25 cents per head up to 40 head and 10 cents for each additional head with a maximum charge of $14.00 on any one consignment. Under the former tariff it should have been $17.00 for 100 head and then the tariff would start over on the next 100 head. Under our present schedule a man can ship 150 hogs for $14.00, the minimum charge on any one consignment. In the former tariff cattle

were $1.00 and the later tariff is now 75 cents, calves were 50 cents and now 35 cents, hogs were 40 cents and now 30 cents, sheep were 35 cents and now 30 cents. The draft charge has been reduced from 25 cents to 15 cents per draft. The tariff filed effective June 18 was the tariff prescribed in the Secretary's order. There were changes made. Lower charges on yarding services were filed than were prescribed in the order.

The Board of Directors are responsible for the tariffs that are filed from my firm. I act under their direction in doing that. The reasons for filing this new tariff were conditions over which we have no control. They were general economic conditions and competition. It was through my efforts that the lower tariff was not filed at the time the Secretary's order became effective. The Board [fol. 1135] of Directors of our firm has had this in mind for a long time and they finally reached a decision to do this on September 26. The Board of Directors of our firm are all producers of livestock and in their meetings they have discussed economic conditions considerably. In making loans at the present time it is almost impossible to get a statement that the Board will pass on. In the past year I have handled over 500 property statements from producers of livestock throughout this trade territory. Only 65 of those property statements were able to get by the Board. That would seem to me an answer to the economic condition that exists, taking into consideration the fact that 50 per cent of the statements would pass three years ago. The matter of rates has come up in every Board meeting for the last year and a half and each and every member of the Board of seven was decidedly in favor of a decrease in amounts. That has been based primarily on the fact that there has been a change in the economic conditions. In the tariff that was filed June 18 the extra service charges on hogs were provided for. They are not in the tariff that was filed by the Livestock Exchange. It made it necessary to reduce our tariff somewhat for competition reasons.

According to a comparative profit and loss statement as of September 30 the firm has made a reduction in expense of $3,865.09 in 1932 as compared with 1931. That is for the first nine months of 1932 compared with the same period last year. There is a difference of $300 in field man expenses and over $6,000 in salaries. Some of the other ex-

[fol. 1136] penses have increased to take up the slack. Advertising shows an increase of approximately $300, auditing $100, automobile expense $500, depreciation on automobiles $100, extra labor $800, miscellaneous $150, postage $150, printing and supplies $100, and rent $850. Directors' fees show a decrease of $200, horse hire $100, and telephone and telegraph $150. The increased postage rates and a tax on checks will increase our expenses about $100 a month. We write about 2000 checks a month. We use first-class mail for sending out account sales and personal letters. At the end of the year our advertising will be practically the same as it was last year. That is due to the difference in the method used in paying for our radio broadcast. For the first nine months of this year we received 2000 carloads of livestock and the equivalent of 1639 cars by truck.

Cross-examination:

I have no change to make in my previous testimony with regard to the organization of our firm and the character of its operations. The Farmers Union is a cooperative organization with membership in the country. We are organized on the basis that if there are any profits in the business we make refunds to our membership: I manage the business as economically as is possible to manage it. I run it efficiently in my judgment. I stated that the cattle rate in the Secretary's tariff particularly on rail consignments was too low to make a profit.

Under the schedule of May 23 where there was a plurality [fol. 1137] of ownership it was expressly stated that in a unit of more than one carload it would be treated as separate consignments. That in a measure took care of the situation to which I just referred. Using the schedule of October 10 the commission on 100 hogs would be $18.00 or 18 cents a head. Where there are 120 head in two carloads of 60 head each the charge would be $18.00 under the Exchange rates effective May 23.

Under our tariff of October 10, the commission charge on two cars of 120 head of hogs, weighing over 130 pounds, would be $20.00 or 16⅔ cents per head. In extreme cases, this present tariff with its minimum and maximum increases the charge relatively as compared with the other tariff when the consignment grows larger. This rate was sent out by the Department of Agriculture but was revised

by my board of directors in an attempt to lower the commission on hogs because of unfair competition and because of economic reasons. If the rate is higher than the rate in the Exchange tariff, I cannot be blamed for it. The Department of Agriculture rules that the rate on October 10 is lower than the rate of May 23. We adopted this schedule on June 18.

We applied the tariff of May 23 against the tariff that was in effect previous to that time. It showed a decrease in cattle of around 9 per cent and 15 per cent on hogs. It was very little on sheep. In changing the tariff of May 23, I was utilizing primarily the results procured under prior tariffs.

Redirect examination:

Our firm handles some livestock for non-members. [fol. 1138] That amounts to approximately 15 per cent of our business.

There has been no change in our personnel during the year 1932. I consulted with members of the Exchange some when they were preparing this tariff of May 23.

In the hog yards we have our own driver to drive hogs from the truck unloading chutes to our pens. At the cattle yards we hire some one to deliver to our pens by the head. We pay six cents a head up to 20 head and five cents for each additional head. There was a change in that sometime during the year 1931.

I do not regard the tariff of October 10 an improvement over the one of June 18, except as far as hogs are concerned. There is not a firm that can make money at the stockyards on this rate. I am speaking now of old line firms. It is necessary for them to go out for business that we do not have to go out for. They not only cannot make money in this tariff, but they cannot exist on it. You can take the number of cattle, calves, hogs and sheep that they receive and figure it out. You can figure it out from an income standpoint and they cannot exist on it. I base my conclusion on the volume which they receive. The volume of business would have to increase materially for the firms at the Kansas City stockyards to find this a profitable tariff. We can operate under the present tariff, but I don't know whether we can operate at a profit or not. The service will not be impaired by the reduction in commissions.

Recross-examination:

In the application of the Secretary's order to our busi- [fol. 1139] ness for one month in the summer we sustained a loss. That was something unusual in our business. The direct buying of hogs by packers has been increasing, and it has become extremely competitive and extremely difficult to meet. It requires constant activity even on the part of an organization with a membership like the Farmers Union to combat it.

Redirect examination:

We experienced a loss during the month of July. April and July are our low months.

Recross-examination:

I would say that it would be necessary for a firm handling the volume of business that we handle to have $15,000.00 to $20,000.00 to operate. To provide for emergencies that might arise, it is desirable to have the reserve of $50,000.00 which we possess.

Redirect examination:

There have been other systems of marketing, at all times, in the Kansas City trade territory in addition to the open market. In saying that my firm should have $15,000.00 to $20,000.00 cash working capital, we would use that in paying for livestock that was purchased, and waiting from three to seven days for a check or draft to clear, it is very necessary that we have a bank balance to take care of that. We need that chiefly in connection with our purchases. I was speaking of a general average. There would be times when we might use more money for our purchases. Capital would be necessary.

[fol. 1140] In connection with the selling of livestock on a commission basis, especially if a man asks that his money be given to him the day that he is in, and we are not able to collect that money until the next day. We have much of that at the present time because of the truck situation. The amount required in connection with selling would be slightly less than that required in connection with making purchases. Some of the respondent firms on the Kansas

City market have solicited business or attempted to get business, holding out the inducement that the rates charged by them are lower than the rates charged by our firm. I have letters to that effect.

This particular letter is addressed to the Frankfort shipping association at Frankfort, Kansas, under date of September 16, as follows: "Gentlemen: We notice a shipment of hogs on this week's market. Are you aware that the hog selling commission of our firm and others averages a good deal lower than the Government rate which we think you have paid recently. No matter how many hogs you have in a consignment, whether 60 or 300 head, our charge is $10 for the first 40 hogs and 10 cents per head for each additional hog, no extra charge whatever for prorations or weighing. We would be pleased to have you figure this out yourself and compare it with what you pay for we are sure that a saving would be welcome to you in these most troublesome times."

A second letter under date of September 22, addressed to the Frankfort Farmers Union, Frankfort, Kansas, is as follows: "Gentlemen: Do you know that we now sell hogs [fol. 1141] at a much reduced commission rate, especially on prorated shipments. Our charge is $10 for the first 40 hogs and then 10 cents additional, no matter how many you have here on one day, and they are billed in one name. There is no charge whatever for weighing separate, prorating or separate account sales. There are four of us working at all times in the hog alleys and we would especially appreciate a trial consignment from you."

Under date of September 22, Mr. Emil Samuelson, Randolph Farmers Union, Randolph, Kansas, wrote as follows: "Dear Friend: Just wanted to call your attention again to that rate for selling hogs. No matter how many you have here, whether one load or ten, the charge is $10 for the first 40 hogs and then 10 cents a head for each one extra; no charge for proration, extra account sales or anything else. For instance, if you had 150 hogs here today, in two loads, the charge would be just $21 no matter whether they belong to 50 different parties."

The next letter is under date of September 22, and addressed to Mr. Endorf. The first part of the letter contains nothing but market quotations with a postscript: "Remember commission charges here are $10 for the first

40 head of hogs, then 10 cents per head additional no matter how many one has, no extra charge for prorating or weighing." These letters are all signed by Martin, Blumquist and Lee, by C. E. Blumquist.

I personally contend that there is an ambiguity in the section of tariff No. 3 in regard to plural ownership consignments. Section D of Tariff No. 3 plainly states that [fol. 1142] two car loads of livestock plural ownership will be charged separately.

(Whereupon the witness was excused.)

W. B. Ecton a witness called by the Government, after being duly sworn, testified in substance as follows:

Direct examination:

I am the same W. B. Ecton who was a cattle salesman for the Producers Livestock Commission Association, and testified at the former hearing as shown on pages 2028 to 2093 of the transcript of record. I still hold the same position with the Producers Livestock Commission Association. I have refreshed my memory as to what I said at the former hearing. As to any changes since that time, I would refer to the condition of our market, the depression that we have been going through for some tme. The cattle have been going down, and the market has been very dull and hard to dispose of these cattle. The manner and method of handling cattle are just the same, but it takes more work. They are harder to sell. That is a condition of the lack of demand. All I can say is that we have had a very unsatisfactory market, and it is very hard to tell from one day to the other what it would be.

Cross-examination:

Corn fed cattle are my specialty. We have a man that sells these grass cattle, and I haven't sold a car of them this Summer. I have observed an increasing difficulty in obtaining satisfactory buyers for grass cattle. That con- [fol. 1143] dition has been growing worse. Corn fat cattle have been selling at quite a premium over grass fat cattle, and they are still selling that way. Our customers over in

Clinton and Clay Counties that feed and produce corn fat cattle do not send any of the cattle that they have ready for market at one time under present conditions. It used to be that they would not think of going to market unless they would get all the neighbors and make up a full train load. This train load would go into one commission firm and the packers would buy in large lots. It could not be done now. They do not ship them that way. We generally do not get over two loads at one time from a feeder. It requires more sales to make four shipments out of one. That is a situation that has been developing over a good long period. It is certainly no better and as a matter of fact it seems to be going the other way. The consignments are getting smaller. The market does not stand up under these big shipments like it used to. I remember one year in Chicago that we had 84 cars of good fat cattle of my own trade, and I never left the alley to sell them. It could not be done right now the way conditions are. A salesman has no control over those conditions. The buyer does not altogether determine that. He has got to consult with the salesman once in a while. I would be perfectly satisfied to trade with the buyer if we could agree. His orders are not strong enough to take that many cattle now of one outfit. The Rolla White cattle, which went through the market this Fall were not offered for sale on this market. We watered, [fol. 1144] fed, and weighed up these cattle and they were ordered out. There was a lot of cattle I didn't see. They were put in a different part of the alley and our yard men looked after them. A salesman would get along better and could come nearer to getting a market for cattle if he has the ability to judge those cattle and appraise their quality according to the market. When I talk about selling, I mean to sell efficiently. A farmer could come in and sell his cattle if he wanted to, but I think he would make a poor job of it. Acquaintanceship with buyers and the nature of their normal demands has quite a good deal to do with it. It helps you out a whole lot if the buyer has confidence in what you tell him. I have done very little soliciting in the country for the past two years. I always felt my services were worth more right in the yards where I belong than out in the country. I am a very poor solicitor to go to the country. We are ready to sell cattle at eight o'clock, but the buyers do not start right on time on all days. Some-

times they are out at eight o'clock, but more generally nine and ten. Sometimes I get through at twelve o'clock, and some days I am hardly through at three. That depends entirely on market conditions. I have seen days that took me longer to sell two cars than it did to sell twenty. Generally I don't have any trouble in selling the cattle if I have a demand for them. Number does not cut any figure when they want these cattle. When the buyers sit around in the alleys until ten or eleven and on some days twelve o'clock we have got to wait. Feeders had a very good year [fol. 1145] right up until recently on their choice corn fat cattle. These cattle are not doing so well now, but some of them are still making money. We had a very good cattle market this Summer on fat cattle, but we have had quite a break of $1.00 or $1.25 a hundred in the last two weeks. There has been a good demand for light weight stockers and a poor demand for the weighty feeders. Two months ago there was quite a demand for heavy cattle to take out for a short feed. In 1931 we had as cattle salesmen and cattle buyers, John Myers, who is not with us now, a man by the name of Russell that sells our butcher stuff, Boone Killgore who sells our stockers and feeders and myself. Then we have two men that buy cattle for us. They are John Scott and Roy McLeod. We have a man by the name of Bruington and he buys some cattle. We are preparing him to sell calves. It is a general practice of the market for a man to start with the calves and work up through all the divisions of the business depending on how he takes hold. We would put him on the stocker, buying stockers or feeders. Butcher stuff and stockers and feeders are altogether different. Different buyers take hold of them. It takes a pretty good man to handle butcher stuff. There are so many different classes and sorting to do. Some fat steer salesmen are more experienced than others. At the present time I would be considered to have more qualifications to sell fat steers than Mr. Bruington. Experience doesn't hurt any. There are some few that don't learn much by experience. I don't think there is any man but what he thinks he is doing his best, but I think the judg- [fol. 1146] ment of a lot of people is better than a whole lot of others.

Redirect examination:

Fat cattle are not altogether the heaviest class of cattle that come to market. We have some light cattle that are very fat. I sold cattle yesterday weighing 925 pounds at 8-1/4, the extreme top of the market, while you could see 1400 pound cattle selling from 7-1/2 to 7-3/4. During the past few months there has been rather a scarcity of our choice heavyweight cattle. The bulk of the corn fed cattle run more to lighter weights. Some of these choice lightweights will sell some days higher than the others. It depends on the orders these men have. These lightweight cattle, unless they are finished, have been rather burdensome on the market. What we call butcher cattle are cows and heifers and common steers. Our butcher salesman also handles the bulls and they often run in heavy weights. We have both heavy and light stocker and feeder cattle. Our best demand is for the light-weight shipments at the present time, and the best prices are on the yearlings. The price per hundred is not altogether governed by the weight of the cattle. Quality and finish have all to do about the price. It takes quality to bring the top price. The buyer wants quality and price and tries to get some that will go out and make good gain. They feel safer in buying the light cattle than they do heavyweights. They don't cost so many dollars and they get a bigger gain on them in weight.

In speaking of the conditions in the old days, when one [fol. 1147] buyer would buy a large quantity of cattle, I was speaking of packer buyers. They don't have those kind of orders these days. The demand for beef, I suppose, has brought about the difference. In selling large numbers to any one firm, it is worse now than it has been at any time. Even before the depression, it was harder to sell large numbers to one firm than it was in the old days. We have a few order buyers at Kansas City but not very many outside of the packers. We have some very dull days when it is hard to dispose of cattle. We have to wait until the buyers get in the notion that they want to buy some cattle. There are days when they won't bid you, and when these packers get their orders filled price does not cut any figure. If we have any left over, we have to hold them until the next day. We always like to sell every day when we can. Once in a while we can-

not. I should think that the orders would be the cause of dullness in the trade. They have to have orders to buy them. Their orders are unlimited some days and other days they are limited. On the days that the market is good, I can sell all the cattle I have to sell. On days when the market won't take them you don't need anybody to help you because you can do it yourself. All qualities and conditions of cattle come in both by rail and by truck. I have sold three or four bunches of cattle in the past ten days, that came in by truck, at the extreme top of the market. You can get just as good quality in the truck as you can in the car. We get choice cattle by truck and we get common cattle by truck. We get all kinds. The same is true by rail.

[fol. 1148] Recross-examination:

I have had some choice fat cattle by truck from over in Clay and Clinton Counties. I have had as high as eight or ten trucks of good cattle in one day. There are some stockers and feeders that come that way. We get more fat cattle by truck than we do stockers or feeders in our alley. More or less. We have a lot of dairy breeds and mixtures in the territory immediately surrounding Kansas City that is served by truck. Our best stockers and feeders come from the West. I have seen some lightweight fat steers weighing 750 pounds, which would bring more than 1400 pound cattle. We would call anything a lightweight which is between 900 and 1100 pounds. We have some lightweights lighter than that that are choice. We do not get so many of that class. Heavyweight is from 1200 pounds up and a medium weight steer is from 1000 to 1150 pounds. On these dull days, I light up my old pipe and sit on the fence and smoke until some buyers come around. I stay and wait for them to come. They know every morning when they leave the office what kind of cattle I have in my alley and how many loads. It is not worth while to run after them until they get ready. You just weaken your hand. The order buyers also know.

Dick Arnett is an employee of the Texas organization. He places cattle on grass in Kansas and orders them out whenever they get ready for market. If the cattle come to Kansas City, the Producers Commission Association gets them.

(Whereupon the witness was excused.)

MR. CHARLES F. VIEREGG, a witness called by the govern-
[fol. 1149] ment, after being sworn testified as follows:

Direct examination:

I am the same Charles F. Vieregg who testified on December 8 and 9, 1930, at the previous hearing. I was at that time connected with the W. M. Leitch Sheep Commission Company and still sell sheep for that company at the Kansas City Stockyards. I have been continuously so engaged since the last hearing. I have read hurriedly my former testimony. It would be necessary to make some changes and additions in that testimony in order to make it conform to conditions as of the present time.

This year we shall not have nearly the number of sheep that we had a year ago or two years ago. The main reason for the decrease in the sheep business is the change in railroad rates effective in January. The rates do not now allow the Kansas City market the privilege of sorting and diverting sheep which do not take the through rate. A packer can buy his sheep in Denver. They can sort them or do anything they want, fix them up so that they have a full car sold, and ship them to New York and, as I understand it, for 18¢ or 19¢ less per hundred than they can ship the sheep from Kansas City to New York. It is causing more sheep to go to Denver, but, as I see it, it is the real cause for lower prices of sheep. For example, today Armour & Company would not buy a hoof in Kansas City because they had some coming out of Denver yesterday that would be here tonight. Otherwise we might have forced them to pay 25, or at least had a steady market today; but they were out of the market, and the
[fol. 1150] buyer told me that he had the sheep coming out of Denver, and before he would bid on my sheep, he said he would have to find out how many would be down from Denver; and when he found out, he would not bid on my sheep at all.

Certain expenses of doing business have increased. The tax on checks for August was over $18. Our postage bill is at least 50% above what it was under the 2¢ rate. Telephone and telegraph bills show a 10 or 15 per cent. additional charge on account of taxes.

Another increase in expenses is on account of the fact that I have sorted sheep at the Prospect and Morris feed

yards and sold them out there to feeders in order that we might take advantage of through rate. On one particular day I had a crew at the Morris yards and another at the Prospect yard at the same time. We were busy all afternoon and did not get back to the office until 6 o'clock. We stayed at the office until eight or nine. I had one or two men extra out at the Morris yards. If we try to save our customers what we can in freight, it means we have got to work Morris, Prospect, and Kansas City all at the same time, and if we continue to do that, we have got to double our force. The extra men I had at Morris were picked up out there. We did the sorting and they helped us. We could not, however, depend on Morris Feed Yard employees all the time to help us. I sold 11 or 12 double-deck loads at the Morris and Prospect yards last week and the week before. These sheep were bought, sorted out there, the feeders taken away from the fat lambs, and [fol. 1151] the feeders weighed out there. I do not sell that many cars each week. In September we did not have very many. Most of the lambs went to Denver.

The case to which I referred was an emergency case, one that doesn't happen every week. We don't hire extra men as a regular thing. I have not figured up my sales for the year. As a rule September and October are considered our good months. In September there was a loss in our business. Commissions did not pay expenses. Our business for 1931 was as good as that of 1930. The volume has been falling off in 1932. I am a member of the Leitch Sheep Commission Company. We hire one yardman and one bookkeeper who does the stenographic work also. Our expenses are reduced to a minimum. We have had this number of employees for several years except on occasions where we have an increased run. On such occasions we hire extra help. We have made no reductions in salaries and wages this year. We have made no such reductions since 1929. Our bookkeeper gets $25.00 a week and our yardman $40.00 a week. We have been able to effect no savings in our office rent. There has probably been some decrease in the cost of our stationery. It would not amount to much. We do very little advertising. We have had one advertisement in a small country newspaper this year. The only other advertising we do with our customers is to give them a book or a pencil whenever they ask for it. We have even stopped giving

books. We go to the country occasionally but I do not think we do as much of that sort of work as a lot of other firms. We have never had a great deal of expense on this account and I think it is at a minimum now. Our commis- [fol. 1152] sions have been reduced in *in* Tariff No. 3 which became effective May 23, 1932. I do not know the extent to which the new tariff has affected our business. I think it is around 10% reduction in revenues. Our firm handles sheep only. Some weeks the reduction would be 12 per cent, some other weeks it would be 10 per cent. I have not figured up our total loss but it must be tremendous to have a loss in September when usually that is one of our biggest months. The decrease in revenue due to the new tariff is shown by our monthly statement. I make comparison each month with the year previous. I had something to do with the making of Tariff No. 3. There was no committee. Several of us were talking about reducing rates. We thought perhaps it was in line with everything. The sheep men got together three or four times and I attended about two of the meetings where we discussed the possibility of reducing rates and tried to get together on some kind of a schedule that might be logical. I agreed with some of the proposals and disagreed with others. The sheep men did not agree on what they thought would be fair rates. I talked with Mr. Gage, our attorney, and we figured out what the rate should be and what we thought was just at the time. I do not know how the matter was handled from that point on. Had conditions been then as they are now I probably would have held out for a higher rate. I did not know then how the changed freight rate was going to affect the fall business. If I had known that the volume of our business was going to be reduced as it was in September I certainly would have felt as though entitled to a little more money. With the Exceptions which I have disclosed [fol. 1153] my testimony at the last hearing would be applicable now.

Cross-examination:

Within the last two years I have observed an increase in competition due to the establishment of small stockyards at points in Kansas City territory, such as Sedalia, Parsons and Joplin. The establishment of these stock-

yards has taken a lot of sheep away from the Kansas City stockyards. Our net profit has been 75% less than it was. Under existing conditions just as much help is required to do the work. Three separate individuals sell sheep for the Leitch Sheep Commission Company; Mr. Stover, Mr. Shuler and myself. We are frequently all busy at the same time. I might be selling Colorado lambs, Mr. Stover possibly selling Kansas lambs, Mr. Shuler selling drive-in lambs. Mr. Shuler does yard work also. We make an effort to keep down expenses for business getting. We do very little advertising. We used to give away books and pencils. We now give away pencils only. We do not have many men in the country many weeks in the year. We get out a market letter and attempt to keep the cost incident thereto as low as possible. This letter contains general market information and is requested by our customer. We revise our mailing list constantly. The Federal Farm Board has been active in the sheep business through loan companies and through the National Livestock Marketing Association subsidiary. They have made loans on sheep. This has affected our business. It does not necessarily affect the market receipts. It tends to divert our business to their agency here at Kansas City. It has actually done so. The yardage charge made by the [fol. 1154] stockyard company on sheep is 8¢ a head or $20 on a car of 250 lambs. We get as a selling commission $17.60 for selling them. We have to look after them in the feed-lots, meet them when they come in, bring the owner in to Kansas City and take him out two or three times, and then sell them after we get them in here. At the present prices of sheep it is not necessary to have as much money in the business as it was three years ago.

I was on the market at Joplin, Mo., this spring or early summer. At that time a speculator there was buying all the sheep. There was no packer buyer on the market. The speculator bought all the lambs at $1.00 a hundred under the Kansas City market and loaded them on the cars for St. Louis. Most of the sheep from markets like Joplin, Springfield and Parsons go to St. Louis. Sometimes they come to Kansas City.

Redirect examination:

The Morris yards have been in existence about 25 years. The Prospect yards are something new within the last 5

years. The purpose of sending sheep and cattle to these yards is to let them rest and fill up before they go on the market and to give us a chance to distribute them properly during the week so as not to glut one particular market; to avoid just such things as happened at Denver today, 62,000 in one day,—ridiculous. I should say that 99 per cent, nearly all of the sheep come from the feed lot to the Kansas City stockyards to be sold. Those sheep are mostly western and I am speaking about sheep that are being shipped to market.

The 99 per cent to which I referred above applied to [fol. 1155] sheep consigned to commission men on the Kansas City market. Sheep not consigned to commission men do not come from the feed yards to the Kansas City Stockyards.

Mr. Stover to whom I referred is my partner. Mr. Shuler is an employee. He is a yard man and helps out by selling truck-in she[illegible]rdinarily Mr. Stover and I sell the sheep. Both o[illegible]s are in the yard every day selling. We have a bookkeeper who is also a stenographer and we do the office work ourselves in the afternoon after our work is finished. We write letters, check account sales and help out in general with all work. We have stayed there until midnight to finish the work.

We do not have to wait two or three days for our money when we sell fat lambs, but when we sell to a man out in the feedlots, say at St. Marys, Kansas, or Garden City, we might have to wait three or four days. We remit on the day of sale or next day for feeder lambs sold even though we have to wait for our money. I should say that we have to wait in every case in which we draw a draft on a man. I should estimate that from 80 per cent to 90 per cent of the sheep we handle are fat.

Recross-examination:

We have peak seasons as to volume and at different seasons different types of sheep are handled. The peak months are usually September and October. This year it will possibly be October. September was no peak month. Then in July we have the run of natives. The peak of the fat lamb run might be January, it might be October.

MR. A. J. MAUSER, a witness called by the Government, [fol. 1156] after being sworn, testified as follows:

Direct examination:

I am the same A. J. Maurer who testified on December 20, 1930, and December 24, 1930, in the former hearing in this case. I am still engaged in the same business and have been continuously engaged since my former testimony. My business was, at that time, owned individually by me and still is. I have no partner. I have read my testimony within the recent past, and believe so far as my testimony is concerned there has been very little change in conditions. So far as my business is concerned, there has been a change. The packers and railroads kind of played heck with a part of my business. We had the privilege of change of ownership here ever since I have been in business. This was changed on January 25 of this year. During the last few months, the amount of business would not show that this change had been a handicap, but in the last two months the change has exerted a considerable influence on the volume of business. There have been many droves of cattle that I could have purchased and shipped East had I been able to secure the through billing. This week I could have bought at least ten or twelve car loads of cattle had I enjoyed the privilege of the change of ownership. This has happened practically every week. Some weeks the number of cars, which I could have bought, would be twice as many as this week. The big packers felt that the order buyers created so much competition for them on this market and other Western markets that they tried to get rid of us in a way. The packers [fol. 1157] apparently exerted so much influence on the railroads that they threw this change of ownership out. The Producers Commission Company had two loads of cattle which belonged to Mr. Charles Collins of Kit Carson, Colorado. I had bid six and three-quarters for the cattle with two out at a different price. That was all that any of the packers or anybody else had bid for the cattle. I was told afterwards that Armour and Company had bid 6.85 with eight or ten cattle out at a different price. I finally made the following proposition. If you will guarantee me through billing on these cattle, route them the way I say, and guarantee the way they go, I will give you

seven cents a pounds for the cattle plus the freight to St. Louis, which would be thirteen cents. That is, I would give 7.13 for these cattle delivered in St. Louis with four cattle at five cents a pound out. This made practically twenty-five cents a hundred more for the shipper than he was bid by anybody else. I bought the cattle and paid for them on that basis. This cancellation of the through billing applies only when there is a change of ownership. The owner can ship these cattle on as often as he wants to. When an owner finds out he can go on to Chicago for thirteen or fifteen cents, if the market is a little mean here, it is a temptation for him to go on. In 1930 there was the worst drouth in Tennessee, Kentucky, and Virginia, that has occurred in forty years. People in the drouth stricken area had to ship out practically all of their cattle. It was a foregone conclusion that during the year 1931 those people would have very few cattle to ship to the Balitmore, Lancaster, and Cincinnati markets. There [fol. 1158] was a drouth also in Ohio and Indiana. When the marketing period arrived from that section of the country, Lancaster and Baltimore, and those markets had to draw their cattle from the West. It created a very nice business for us out here had conditions been normal. That condition, in my opinion did not account entirely for the fact that I did more business in 1931 than I did in 1929. I have been ten years in building up this business, and I would not feel very proud of it if I could not increase it as I went along. I have tried to maintain a reputation that would encourage people to come to me. I think that has had something to do with it, but the drouth condition had a great deal to do with it also. My business for 1932 will be smaller than it was in 1931. There are times though when it is just as much trouble to buy five loads as it is to buy forty loads under changed market conditions. There are days on which one can buy forty loads quite easily and there are days on which he finds it difficult to buy five loads at the price he feels he can pay.

In buying cattle, I deal with one salesman at a time. A salesman at a time. A salesman talks to only one buyer at a time. A salesman talks to only one buyer at a time, as a general rule. There are exceptions, however. If I were trading with one commission firm, and the representative of another should come up, he would say nothing to me unless I asked him what he wanted.

In spite of the fact that we did considerably more business in 1931 than in 1929, the expenses for 1931 were considerably less than those for 1929. Part of this was due [fol. 1159] to the fact that I let my hog buyers go. Outside of this, I do not know specifically how I cut my expenses. I had not reduced salaries or wages of any employees up to 1932. Since that date there has been some reduction amounting to 12-1/2 per cent. This reduction applied to all employees except two and took place on July 1st, 1932. As a matter of fact I reduced the salary of one of these. He quit and I hired another one at the same salary he had been receiving. I did not reduce the salary of the employee numbered four in the audit. He was a hog buyer, but he always helped in yarding cattle. After we stopped buying hogs, I put him to buying calves and to yarding them. He yards in the cattle yard and when I have some hogs and calves to buy he buys them. My sheep are bought by another firm on a split commission basis. This is for the purpose of economy necessary on account of the low volume of sheep that we are buying. I could not afford to hire a sheep buyer. It would be necessary to have a certain volume in one's business before he could afford to pay the salary of a buyer to handle that species. The volume of sheep, at times, is sufficient, but it lasts only for a short time. The annual volume is not sufficient. In order to justify the hiring of a buyer on a profitable basis, I would have to have about three times the volume shown in the audit of my business. The packer has a definite idea of what he wants. The feeder does not. One will perhaps spend from two to five times as much time with a man buying stockers as he would with one who wanted to buy fat cattle. When I am buying for a packer, I have his order. I know what he [fol. 1160] wants and go ahead and get it. When I am buying stockers and feeders, I often have my customer with me, and he does not know just what he wants. I have to do a lot of shopping around and showing.

Cross-examination:

I would not consider it practicable for one firm to handle all the business. However, there wouldn't be as much difference on one firm handling all the business, as far as the number of salesmen is concerned as might be imagined.

One salesman can only consistently sell about so many cattle. If one firm handled all the business it would have to have practically the same number of salesmen as would now be employed by some of the larger firms. What a man can do depends upon variable market conditions which no one can forecast or foretell. A man you would hire would not be as efficient as a man who owned the business and operated it himself. I have always been on the buying side of the market.

What I said with respect to the salesmen of commission firms applies to buyers as well.

I have a substantial investment in farms and ranches. I had some financial success in my operations up until 1931.

I still use the telephone and telegraph facilities in keeping in contact with my customers. The telephone tax and the increase in postage and the tax on checks amount to several hundred dollars a year in my business. I did not have these expenses in 1931. I have tried to keep the salaries of the people I employ at a reasonable level. I do not believe that I have had a buyer, who has worked for me for several years, who could not have gotten more money from some one else if he had wanted to. One of my em-
[fol. 1161] ployees did get what he considered quite a raise.

The capital investment in my business as of December 31, 1931, was $56,283.63. I have to have that amount of capital in my business. I could not get along with less and handle it as I am doing.

Redirect examination:

When I buy livestock, I pay for it by my own check. None of the packers for whom I purchase furnish me with funds in advance. I use my own capital and draw upon my customers. I receive money on my drafts in from four to two weeks. I charge my customers ten cents per hundred exchange. It is really interest to offset the float.

I do not believe that there is anybody in the world that could tell you what the limit of one's ability to purchase cattle is because conditions change so rapidly and vary so much that one day I might be able to buy 100 cars and on another day I could hardly buy ten. There have been times when the market was right and when I considered the prices at which I could afford to buy when I have found

myself unable to buy my requirement because there was not time enough in the day. Last Monday we had 28,000 cattle. I had orders for 30 loads of steers. I bought 12. There were plenty of cattle there, but the kind I wanted I could not secure at the price I felt was in line.

There have been a few times this year when I could have bought more cattle if I had had additional help. This is due to the fact that I could not cover the yards and see [fol. 1162] more cattle. The day of which I speak was not a heavy day. I should say it was under 25 cars. I have seen this situation arise on a normal market day. You could not get over the yards. You would be in one end of the yard and one thing after another would happen to throw you out. You would have bad luck. You would think that you would get a bunch of cattle and when the salesman went to see the owner, the owner would not let them go. On the days when I could not get around like I wanted to, I should say that my purchase was ten to fifteen cars.

There is a difference between a buyer and a salesman. The salesman works in one locality, the buyer all over the yards, but the salesman, if the market is dull, has to cover the market in order to find a buyer to come to him. On a bad market the salesman has to get out and hustle and use his ability and foresight to find a live buyer somewhere. It may be that the packers are all filled up and the seller wants to find an order buyer or a farmer who will purchase them for feeders.

When Tariff No. 3 was under consideration, I was called into an executive meeting by the Live Stock Exchange. I told them my rate for purchasing cattle was $15.00 a car. I told them I did not know what my competitors were charging. I found out later they were charging ten to twelve dollars a car.

Cross-examination:

I made no objection to the order of the Secretary in the recent rate proceeding and filed no application for rehear- [fol. 1163] ing. The new tariff filed by me was a copy of the tariff prescribed by the Secretary in his rate order. The tariff prescribes a maximum charge of $15.00 per car and I have applied the maximum in all instances. I have had only one man complain of my charges. He stated that one of my competitors would buy cattle for $12.00 a car

while I was charging $15.00. I told him that I was sorry and if that was going to stop him I would have to lose his trade.

Redirect examination:

Inasmuch as I never ship less than in carload lots my rate for buying cattle is $15. per car, the maximum.

HERMAN C. HENRICI, a witness called by the Government, after being sworn testified as follows:

Direct examination:

I am a consulting engineer and employed by the Department of Agriculture in the Bureau of Animal Industry as chief valuation engineer. My office is located in Kansas City, Missouri. I have made a second appraisal of the furniture and fixtures of the market agencies operating on the Kansas City Stockyards as of August 1, 1932. I have here a report of the appraisal made as of August 1, 1932, of the furniture and fixtures of the market agencies operating on the Kansas City market. It is designated Government Exhibit 131.

Government Exhibit 131 was received in evidence.

Cross-examination:

[fol. 1164] In some instances the automobiles owned by the firms were in the field. We took the word of the owners as to the location of those automobiles. We did not intentionally omit any automobiles. In every instance where the ownership or the use of the car was distinguished as between the business and the individuals in the business we were governed by the statement of the commission men. In firm No. 44 we included no automobile in the appraisal. We included no automobile in the appraisal of firm No. 46. These omissions are due to the fact that we had no knowledge of any automobile being used in the business. The statement of the commission men in each instance was to the effect that they did not have an automobile which they use in their business. I personally did not make these inquiries. It would have been possible for one man to make all the inquiries but not expedient.

Redirect examination:

The items of which we could have no knowledge were checked over with the commission men after the appraisal was made. If the furniture and fixtures were sold out of these offices as second-hand stuff they would bring a much lower price than the value at which they are appraised.

Whereupon the witness was excused.

At the former hearing Exhibits 19-A to 19-E were introduced showing the commission charges for market agencies operating at Baltimore, Pittsburgh, New York, Jersey City, [fol. 1165] Cincinnati and Lancaster. Supplements to the tariffs showing changes in commission rates which have been made by the market agencies operating in the Union Stockyards at Baltimore, the Union Stockyards at Cincinnati, and the Pittsburgh Joint Stockyards were introduced. These supplements show the only changes which have taken place at any of the markets enumerated above.

Homer G. Burns, a witness called by the Government, after being sworn testified as follows:

Direct examination:

I am the same Homer G. Burns who testified in the former hearing in this case. I was in the employ of the Packers & Stockyards Division of the Bureau of Animal Industry of the Department of Agriculture at the time of my former testimony and have been continuously thus employed since the date of the former hearing. Since that time audits have been made under my direction of such of the firms previously audited as were in business in 1931. Some of the businesses audited for the year 1929 are not now being conducted at the stockyards. A few are now in business who were not in business at that time. The audits covering the year 1931 were made in the same manner and by the same method as described by me as having been used in making the audit for the year 1929 except that we relied considerably upon information contained in the report that the market agencies make to the Packers and Stockyards Division, known as P. S. 3. We obtained the basic information in most cases from P. S. 3. We had to

[fol. 1166] relate this to the books and break it down for the matter of expense classification. That necessitated the use of the books and other data in the office. We did not check the information contained in P. S. 3 in all cases. We had to refer to the books to break down the various items shown in P. S. 3 but as to verifying P. S. 3 by the book record we did not go to that extent. This does not mean that there were any firms whose books were not examined. It was only certain items appearing in P. S. 3 which were not verified. For instance, revenues from commissions as set up in P. S. 3 were accepted in the first instance as being correct. Our tabulation of accounts of actual account sales, which was in detail in every instance, may not have verified the amount of commissions as shown on the P. S. 3. We found it necessary then to refer to the books and if the book entry was the same as the P. S. 3 it in many cases necessitated a thorough check of the income account, that is, to separate the various sources of income. They may have had one income account containing commissions from selling, commissions from buying, clearance commissions and they may have charged against their income account split commissions paid, making the net entry in the P. S. 3 smaller than the gross income derived in the conduct of the business. In cases like that we found it necessary to go to the record, first the ledger, then the journal or account sales register.

In the breaking down of the classification of expenses we [fol. 1167] went to the books of original entry consisting of the ledger and supporting journals and the other memoranda in the office. As illustrative of what I have said, I shall take firm No. 1 as an example. We found very little authoritative data in the office of this firm to support from P. S. 3. He had in his office copies of his account sales which we tabulated to determine his gross income from application of the tariff. His salaries were determined from checking records and consultation with him. I do not think this man maintained a set of books that would give or permit of a classification of the expense in the manner that our instructions required so we had to rely on memoranda, check stubs and information furnished by him in order to set up his expenses. There is no doubt but that he gave us all the expense it was possible to load in. The memoranda and check stubs were records in his office. P. S. 3

has a classification for telegraph and telephone. In order to analyze the one large item on P. S. 3 or general miscellaneous expense, we sometimes found minor items of telegraph and telephone included in this general miscellaneous account. This necessitated our going back to the telephone and telegraph account and adding to it, or it might have contained credits that applied to that account so the blue audit might not exactly verify the P. S. 3.

We prepared a questionnaire setting forth each employee and his title as furnished by the firm, the amount of salary received for the period for 1931 and the number of months [fol. 1168] that he was engaged by the employer firm. We then assigned a man to determine the distribution of each individual's time according to the species or function of duty. He was assisted in this by the Secretary of the Exchange and we had full cooperation of the Exchange in securing this information. I feel sure that if there were any radical errors in that list of salaries it would have been detected after they were submitted to the firm. These questionnaires were returned to us after the distribution of each employee's time had been set out on them. This distribution was set out during the time of the checking between one of our subordinates and Mr. Stebbins, the Secretary of the Exchange. When they had been returned to us I do not recall any major corrections. There might have been added in an instance or two commissions paid as salaries that were not listed on the questionnaire, but were in the audit or the blue audit. I did not use the questionnaire exactly as a basis for verifying the salaries stated in the blue audits but it did answer that purpose and should have brought out any error in the salary expense. The names of the individuals under my supervision in the preparation of these blue audits are contained in the statistical study, Government Exhibit No. 115. None of the employees listed in this exhibit are in Kansas City now so far as I know except Miss Bonzelle, Miss Hawkins and Miss Fox, the latter two of whom are engaged in this hearing. These young ladies were tabulators. The others engaged upon this work have been assigned to other duties. The auditors [fol. 1169] have been assigned to make other audits, the clerical force may have gone to their headquarters or may have received other assignments since. I am satisfied that the instructions under which the audit of 1929 was made

are practically the same as those under which the 1931 audit was made. I recall no material change.

In the year 1931 we included on Schedule 3 the statistical data with reference to owners, account sales or account purchases and drafts. I don't believe that that was included in the 1929 audit, however, we gathered the same information in 1929 and it was requested in the instructions to auditors. The inclusion of this information in the blue audit here at Kansas City is the first time that this has occurred. It was done here in order to expedite the submission of this information to respondent's accountant. This information was gathered in 1929 and shown in the work papers. The only difference is that it was typed and set up in the audit for 1931. In making the audit of 1931 we assigned the same identification number to each firm as we did in 1929. We gave new and higher numbers to the new firms that have gone into business since 1929. The order buying firms were given numbers beginning with 101 and ending with 107. Government Exhibit 115 contains an alphabetical list of the firms audited with their corresponding number and also a numerical list with the corresponding firm. These lists do not include the order buyers. The identification of the order buyers is as follows: [fol. 1170] Firm No. 101, A. J. Maurer; 102, Feaman and Nolan; 103, Rice and Kirk; 104, K. L. Peterson and Company; 105, B. C. Stanley; 106, W. F. Humphrey and Company; 107, Corrigan and Soeder; and 108, Graybill and Stephenson. The income of the latter firm arises principally from trading and a little from clearing other traders. Their audit shows no income from buying or selling livestock on commission. The information contained on each of these so-called blue audits represents a summarization of more detailed information contained on the work sheets.

Government Exhibit

The blue audits were introduced in evidence and numbered as follows: 114-1, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 23, 25, 26, 29, 30, 33, 34, 35, 36, 37, 42, 43, 44, 46, 48, 51, 52, 53, 54, 55, 56, 59, 60, 61, 62, 63, 65, 66, 67, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 82, 83, 84, 87, 88, 101, 102, 103, 104, 105, 106, 107.

It was stated by counsel for the government that all those, except clerks heretofore named, had been called to

other places to pursue their official duties, but that if any of the respondents desire that any of those subordinates be made available for questioning respecting their work, they would be made available at the hearing. Respondents objected to the offer as made to all the so-called blue audits or exhibits so identified by reason of the failure to identify properly each and every one of the blue audits under the testimony of this witness and because of the claim that the [fol. 1171] testimony shows that the audits in and of themselves were based on evidence extraneous to these exhibits; namely, the PS-3 report and that it is impossible to ascertain, under the testimony of the witness, what portions or particulars of the blue audits, as outlined in the report PS-3, were relied on, and as to what portion or particulars of so-called blue audits, examination of books, ledgers, accounts, or documents of original entry of the respondents were relied on and for the reason that the testimony of the witness with respect to the only one of the audits particularly specified does not show what expenses from the books were loaded into the audit. The form PS-3, concerning which the witness testified, is the annual report which each of the market agencies makes to the Secretary of Agriculture, and it is signed by some owner or employee connected with the market agency. It is certified as a record taken from the market agency's books. It is my understanding that the Secretary of Agriculture has the authority to request this report of each market agency. No blue audit was made of any firm on the basis of information contained only in Form PS-3. We accepted the amount of money involved in an item in no case because it was in PS-3. We verified it from the books and records in every instance.

Cross-examination:

At the time of the last hearing, the Secretary of Agriculture had not prescribed any standardized method of ac- [fol. 1172] counting or bookkeeping to be followed by market agencies then respondents in that proceeding. I know of no order or regulation of the Secretary that prescribes that market agencies, at this or any other public stockyard under the regulation of the Secretary of Agriculture, shall follow standardized methods as to the segregation of income or expenses incident to the transaction of their

business. The Packers and Stockyards Act says that they shall keep good and sufficient records.

With respect to firm No. 1, I mentioned, I had no intention of saying that the gentleman loaded into the audit any unnecessary expense. What I intended to say was that, even though with the absence of books and relying on his check stubs with insufficient memoranda of them, it was possible for him to get in all of the expense applicable to his income. There was no respondent, to my knowledge, who did not maintain a checking account and have stubs available for my inspection. Check stubs are the source of original entry, if supported by proper memoranda. Firm No. 1 listed $60.00 under Exchange Assessment. There is no other expenditure in connection with the Livestock Exchange noted on the audit. The Exchange assessment, in that case, may be the straight membership assessment or it may be the amount that he paid as per car assessment. The records indicate that Firm No. 1 was in business from January 1 to December 31. He handled some sheep. I do not know whether this man was a member of the clearing house. If he was, there is no item of expenditure on account of it. Assuming that he paid during the [fol. 1173] year to the clearing house association the usual monthly assessment of $3.00 per month, or $36.00, and also paid a per car assessment of $35.50 on his livestock, I do not see where those expenses could appear on Exhibit C. Exchange assessments and dues were grouped in these exhibits. The instructions may have been changed in that respect to the setting up of this item, or it may be that we did not have time to make the detailed analysis of the Exchange expenditures, or again we may have been relying on the possibility of securing that from the Exchange in order to apply that analysis against the gross expenditures made by the firm and the Exchange.

Mr. J. H. Mercer, a witness called by the Government, after being sworn testified as follows:

Direct examination:

I am the same J. H. Mercer who testified on December 12, 1930, in the former hearing in this case. I was then and I am now livestock commissioner for the State of Kansas

and secretary and general manager of the Kansas Livestock Association. I was and am a producer of livestock and have livestock on hand at this time.

The livestock industry is in a much less favorable condition today to pay its marketing costs, or any costs for that matter, than it was two years ago. Prices are lower. This, coupled with all other correlated business on the farm, has produced a condition in the industry much worse than it was two years ago. This applies to the entire livestock [fol. 1174] industry, producing, marketing, slaughtering and packing. I am not as conversant with the costs of other branches of the industry or the conditions of the other branches of the industry as I am with the producing branch of the industry. The condition of that branch of the industry is much worse now than it was in 1929. It would be difficult to describe the difference between the situation in 1929 and now. The condition in the livestock producing industry now is so serious that it is difficult to analyze the methods of meeting the situation. Marketing charges such as freight to market, stockyard and yardage and feed charges and commission charges, the same now as in 1929 would have a much greater depressing effect than they did then. The industry was in very good condition in 1929, generally speaking. The burden of market costs today would be far greater than at any time since my former testimony was given. More than 50% of the livestock sold at the Kansas City stockyards originates in the State of Kansas. This applies particularly to cattle, and perhaps hogs. I do not know that it would apply to sheep. I know of no business that is as profitable now as it was in 1929. Salaries and incomes have declined somewhat but the percentage of decline as compared with the percentage of decline in the values of livestock and all other farm products is small. I know of some businesses that have suffered almost as much as farming. I think our public markets are essential. For a good many years we have had quite a large diversion of shipments to direct killing plants. I think that is harmful to the producing end of the industry. [fol. 1175] It is obvious that the packer would not participate in such a class of business if it was not to his advantage. What the packer pays on these direct shipments is based upon the market value at the public market. It is easy for the livestock exchange merchant to say that his

business is being conducted at a loss, but when he realizes that his patrons have become almost insolvent because of a decline in the value of their livestock, it is time for the commission merchant to face the fact that he must make concessions even though it be to his own disadvantage. These concessions would be reduction in costs, cooperation, working more closely together, consolidation of the business, elimination of unnecessary concerns. I am of the opinion that in ime it will work itself out but it is a serious situation with our people to have to pay any cost above the lowest possible level. It is not possible for some of them to make it and if they can eliminate the yardage and commission charges by sending it to some killing establishment without going through the public markets they are apt to do it. They would not do it otherwise if it was not for the depressed conditions.

Producers are taking advantage of transportation situations that have come up and go around the public markets. They get a through rate to a foreign feedlot or a lower rate by passing around a public market. All these things have been disadvantageous to the public market so far as the [fol. 1176] maintenance of efficiency is concerned and have been to the disadvantage of those engaged in this business. You cannot eliminate this condition by discussing it. The livestock producers industry is in such a distressed condition that a man who can save ten or fifteen cents a hundred or a head tries to do so whether it is to his advantage or not, and my present opinion is that it is to his disadvantage. I feel that the public market is the proper place at which to merchandise livestock provided we can centralize the competing forces so as to create better competition.

In my former testimony, I commented upon the fact that there were more people engaged in the selling of livestock on commission on the Kansas City stockyard than the business could support. I don't think that so far as the increase in number is concerned that it has been any worse since that time. I think there are fewer commission men on the market, but the condition that has made it worse is the diversion from the public markets of livestock into other channels. The commission men do not get the volume that they used to. The volume of business is what means revenue to the Livestock Exchange man and the yard company. When business drops off the revenue drops

off and these diversions have lessened the necessity for so many agencies on our public markets. There is no question about it, and "there has been some less." I do not think that the decrease in the number of people engaged in the commission business has kept pace with the decrease in the volume of livestock to be handled. I do not think it has kept pace with the necessity of restrictions of the [fol. 1177] number of concerns that operate on the public market.

In my opinion it would not require any greater personnel of salesmen and yardmen to handle a given number of livestock arriving at market now than it would have required to handle the same quantity and quality of livestock arriving in 1929.

Cross-examination:

During the last eighteen months or two years of depression, it has been difficult for all branches of business and industry to adjust themselves to reduced volume. This statement applies to the livestock industry, the livestock producers and the farmers. The statement has been made, especially in newspapers that there are too many farmers and too many wheat growers. I have seen a few make that statement to us, not very many. My statement with respect to the necessity for the control of and the restriction of the number of market agencies on a public market, to which I made reference in my former testimony, and as to which I have testified in this hearing, was made on several occasions prior to my testimony in 1930. The opinion which I expressed is the opinion of my organization. It is my own strong personal belief and the belief of the organization I represent that there ought to be some manner of control or restriction over any agencies entering the business where they were not needed. I am a strong believer in competition in the buying and selling of the products of the livestock industry. The competition of the commission merchant is not in respect to the charges he [fol. 1178] makes but in the service he renders. He competes on the ground of efficiency of service very largely.

Surpluses earned under the cooperative plan of marketing are refunded to the members. The cooperatives, generally speaking, sell at the same fixed rate of commission as the non-cooperative agency and, in so far as earnings

or revenue are concerned. The important factor is volume of business.

There is a difference and a variability in the comparative efficiency of different market agencies on a given market. I have some knowledge of values of livestock, and I have some knowledge of its condition, and I know that we have agencies that would apply to the cooperative agencies as well, which are not conversant with the business they are conducting. They do not know values as they should. The first requirement of an efficient salesman is his ability to judge accurately and appraise accurately the quality of the livestock he sells. I have been familiar with the livestock industry for forty odd years. I am strong for our public markets. I believe in them. I believe that the public market is the only method and scheme we can devise now, or that has been devised, that creates a practical and sound channel for the merchandising of our business.

I have also come up through these years and noticed the methods by which the sales agencies have been formed. I have paid pretty strict attention to the buying side of the industry so far as the packing side is concerned. I think [fol. 1179] the livestock sales business is on a much higher grade. I think a high type of people is engaged in it. A good many of them are well versed in the business compared with what they were a few years ago, yet I think there is plenty of room for correction yet. I do not think that any sales agent should be permitted to set up a desk in any room and say "I am a livestock commission merchant," as he can do now and has been able to do during all these years. There ought to be some way of restricting him or requiring him to prepare himself for the business. If we are to have the controlling force of Government, it should lend its efforts in that direction. I have given this testimony a good many times in a good many places. I have testified directly on that particular subject before the Senate Committee of Congress. I have testified before some of our State Committees as well. I have not seen the situation relieved by additional legislation or administrative action of any kind. I have at various times and at various places stated my opinion as to the undesirability of direct purchases of livestock by packers whose plants are adjacent to and connected with the public mar-

kets. I can observe no change of consequence with respect to direct buying. Some changes may have come in some localities, but none of consequence. I do not know that it can be corrected except probably through legislation. Decisions of the Interstate Commerce Commission have eliminated and driven away from the public markets shipments that otherwise would pass through them. The change of ownership at the public market has been in vogue [fol. 1180] in this country since I was a young man. It was eliminated by a decision of the Interstate Commerce Commission in June, 1931, to become effective in January, 1932. This is harmful to the business of the public market and is a detriment to the producer. I think it will be corrected, but it will take some time. This regulation diverts livestock from the public market. This is harmful not only to your livestock commission business, but also it is a demoralizing influence on prices. If you are going to have control of an industry and regulate it, there should be no half way reasons about it. Such a procedure destroys ones usefulness. It destroys the faith of the people you are serving, and creates difficulties in getting Congress to listen to sane matters. I urged upon Secretary Jardine to take some action, and I think he would have done so, if he had not been advised that he could not do it under the Packers and Stockyards Act. You gentlemen know it is a hard matter to get Congress to change this Act. We have tried it in many instances. Tried to get the law strengthened and changed, but influences from some source have prevented it.

At the last session of Congress, a hearing was had before a committee of Congress at which representatives of the Exchange recommended some of the changes you advocate.

I have very fixed opinions about the existence of three markets in the neighborhood of Kansas City instead of one. There are certain services that distributing stations and feed stations, such as the Morris and Prospect yards, can render. Such yards should have no marketing rights [fol. 1181] so far as they relate to the general public marketing business. It is only recently that an advantage over the public market has been given them. A producer cannot be blamed for selling his cattle at the Morris or Prospect yards, if some trader comes along and offers him a

price above that which he can obtain on the public market because the railroad rate on the shipment has a different standing at the Morris and Prospect yards from what it has on the Kansas City market.

The existence of such privileges as exist at these outlying points and at such small markets as those at Springfield, Sedalia and Joplin, and denied to larger central markets, like Kansas City, constitutes an obstruction in the normal flow of commerce through the great public markets like Kansas City.

The Kansas City Livestock Exchange has been interested in the activities of the National Livestock Meat Board. We regard the National Livestock Meat Board of tremendous importance to the meat industry in carrying the message from the producer to the consumer. The Kansas City Livestock Exchange has been one of the most active cooperators with the Board.

The Exchange, since 1929, has cooperated in the sanitary work of the livestock industry. The exchanges at St. Joseph, Kansas City, and Wichita have cooperated. The work done by the Kansas City Exchange has been very helpful to the industry. It is a well known fact that business transactions on our public markets are probably the most dependable of any other class of business. Business [fo 1182] transactions of great magnitude are consummated by a nod of the head or by a crack of the whip, and seldom is there any misunderstanding about deals. I have no knowledge of any actual loss suffered by any purchaser because of a defect in title to livestock.

Commission men operating on the Kansas City stockyards are not permitted to act as both seller and buyer of the same cattle. A commission firm representing a buyer may purchase from a trader livestock which that commission man had sold that trader. The commission man could not represent the seller and the buyer in the same transaction.

Redirect examination:

In my opinion the privilege of change of ownership of livestock at the feed yards is detrimental to the producer's interests in that it gives a preferential consideration of rates by reason of consigning it to those outside of the market points over the public market.

HOMER G. BURNS, a witness called by the Government, having already been sworn, testified in substance as follows:

Cross-examination continued:

I assisted Mr. Bachmann in the preparation of the statistical study of costs. I did not observe any adjustment made to reconcile the exchange assessments with the blue audits. On page 24 of what will be called Government Exhibit 115, for Firm No. 1, under recapitulation of business-[fol. 1183] getting-and-maintaining expenses, is an item of $60 for exchange soliciting and membership dues. That is in accordance with the blue audit which is Government Exhibit 114-1. To my knowledge no adjustment is made of this item in proposed Exhibit 115. Firm No. 1, according to Government Exhibit 114-1, had 99 cars of sheep, from which he derived selling commissions. At 25 cents a car, 99 cars would produce $24.75. The clearing house charge of $3 a month for the 12 months would produce $36. For this firm, postage is not separately listed. It may be in stationery and office supplies. In the audit of this firm there are no items of expense covering insurance, compensation, theft and liability; errors, adjustments and refunds; taxes, bonds, legal and auditing; depreciation on furniture and fixtures; office repairs; general office expenses; automobile expense; and automobile depreciation. We have included depreciation for furniture and fixtures. I do not know whether this firm really had any expense for these items. We gave the firm ample opportunity to include every item of expense that it had in connection with its business. We gave it opportunity with the very poor records that were available to apprize us of any expense of any nature which it had in connection with its business. I did not mean to infer when I said that he had an opportunity to "load in" expenses that he attempted improperly to charge up items of expense. We did ask him for any expense of any nature, and the result of that and what he produced to convince us of his expense is reflected in this blue audit, Exhibit 114-1. I would hate to think that a man in [fol. 1184] business would not be able to give us proper evidence of all his expenditures. It may be true that he failed to call attention to some expenses, but he certainly should

be able to enumerate all the expenses in connection with his business.

I know that every registrant is required to give a surety bond and that a premium must be paid to the surety company. There is no item of expense for premiums paid on bonds. I know it is possible that some insurance company may be carrying him for that bond and the premium has not become an actual expense item. The volume of business of this firm is very small. With the allowance of $2,400 a year as owner's compensation for 1931 there was a net loss with the expenditures which we did include of $961.92. Schedule 2 shows his office salaries to be $55 but that does not necessarily mean that that is all of his office expense. The questionnaire may have applied some of the owner's time to office, even though he is designated here as selling sheep. I would think that he could keep excellent records without the expenditure of any additional money for office help. He did have copies of all his accounts sales in the office. He did keep a record of his accounts sales and the receipts that passed through his hands for the sale of livestock and the disposition that he made of the proceeds of sale. There were check stubs, but we did not determine whether they represented all of the disbursements of that account.

The answer which I gave to the question at the former [fol. 1185] hearing with respect to the expense of keeping records of costs as to the performance of the separately rated services still stands, but that has no application whatever to the keeping of a so-called set of books to determine the net loss or the net gain from the operation of the business. That has to do with cost accounting. The fact that they are losing money, in my estimation, would necessitate a better record to determine where the loss was occurring. Auditors do not like to work without pay, but that would not have any bearing on the management of the firm and their desires in connection with the business.

What is true with respect to Firm No. 1 as to the noninclusion of items of expenditures does obtain in a very few cases. I think that the majority of the firms at this market had sufficient records to set forth all of the expenses incurred in their business. This Firm No. 1 is quite an isolated case. I have only one other firm in mind and that is Firm No. 4. Firm No. 43 had not posted its books for a

period of approximately nine months. Their failure to keep up the posting at the current period may have resulted in some confusion or error in classification.

Another firm was No. 67. The owner of that firm having died sometime during the period of investigation the records were destroyed or misplaced. I feel sure that we got only a portion of the expense accruing against the income for the period that the firm was in operation. These are isolated cases. Most of these firms had ample oppor- [fol. 1186] tunity to apprize us of all expenses in connection with their business and had records in support thereof.

The term "exchange soliciting" originated on another market and had not got out of the minds of our auditors engaged on the work here. The location of the expense on Exhibit C would have no bearing on its ultimate use or perhaps in the statistical study. We understood the full nature of the exchange expense. Under the title of "exchange soliciting" we include all of the exchange assessments for whatever purpose made. I have no particular reason to be acquainted with the schedule of charges that was in effect at the time the proceedings started. I had occasion to be more acquainted with the schedule that was in effect during the period under which we were making our audits. I was naturally acquainted with the tariff in effect covering the period we were investigating, but whether it was the same one time or another I really do not know. I am not acquainted with the tariff prescribed in the Secretary's order. I have read the order which became effective May 23, 1932, and have questioned various individuals about it. I am sorry to admit that I still do not seem to grasp it. I am unable to understand the full application of it.

Exhibits 114 apply and cover the year 1931. This tariff was effective in the year 1932.

I have no individual firms in mind which spent less than 50 cents per car for yarding salaries and expenses.

We determined the compensation of the owners from [fol. 1187] their book records, and it is supported in most cases by the work papers. The time would be indicated by the salary basis and the number of periods it was paid. The total was determined from some one in authority for that firm. I am making no effort to testify for the Secretary's salary basis. I am only confining my testimony to

the audit under Exhibit 114. I do not believe that you will find on any one of the Exhibits 114 that we set the profit up as salary, unless it was so accepted by the firm or its members. We did not eliminate anything. An owner's compensation could be the direct result of a salary charge or the net result of operations. In the audit, Exhibit 114-5, there is no salary set up for the owner of that business. There was no salary expense which I included for this firm in determining the net profit.

Assuming that there had been set up in the exhibit as compensation to that particular owner, he being a sheep salesman, a salary of $4,500, the next profit remaining would have been $81.98. As it is set up in the audit the net profit appears to be $4,581.98.

There is not included any compensation for the owner of Firm No. 9 in determining the net profit of $1,572.62. The audit shows that the owner of this firm devoted 12 months of his time to the business. Unfortunately, his function is not stated here, but it must have been on the questionnaire. There is no compensation included for the owner in the case of Firm No. 11 in determining the net loss of $452.95. [fol. 1188] The audit shows that he devoted five months' time to the business. I did not include any compensation to owner or owners in the case of this firm 12 in determining the net loss of $2,332.66.

There is compensation included for owners with respect to Firm No. 17. The amount was $4,580. It is evidence that I did not use the standard of compensation set out in the Secretary's order. I took the facts as the books reflected them. If that is all the man thought his services were worth for handling that volume of business all well and good. I had nothing to do with what the man's services were worth, and I did not assume anything in regard to that. It is not a matter of assuming what the man thought about his services. I was not interested in that. If I had accepted $5,000 a year for one of these men and $3,000 a year for the other, the loss would have been increased. Under the set-up which I made there was a net loss of $4,900.

On Exhibit 114-26, I show a net profit from the operations in 1931 of $6,231.56. There was not included with reference to firm 26 on Exhibit C any compensation to owners in determining the next profit. It shows that one

of these gentlemen was selling cattle 12 months and another was selling hogs for 12 months. I had not considered the value of their services under any circumstances or what they thought they were worth.

I did not include any compensation to the owner of Firm No. 51 in determining the net profit of $17,703.78. Schedule No. 2 of the audit shows that this owner was engaged in selling hogs for a period of 12 months. Exhibit D of this [fol. 1189] same audit shows that he withdrew $20,441.73.

With reference to Firm No. 54, there was no salary for owners included in the profit-and-loss statement in arriving at the net profit of $23,803.57. The supporting schedule for Firm No. 54 does not show that the owners rendered any personal service in connection with the operations of this firm. I have no reason to doubt the correctness of that schedule.

There is no compensation for owners included in the exhibit for firm 65. It shows a net profit of $5,249.70. The schedule statement of salaries shows one owner selling cattle twelve months and the owner inactive twelve months. The work papers show that the second owner is Mrs. Moffett and that she was inactive. They show that she withdrew during the year $1,018.58. My own information about her activities is that which is disclosed by these working papers.

There was no compensation for owners included in arriving at the net profit of $265.12 for firm No. 78. The salary statement does not show that the owner devoted any time to the business during the year. In the absence of the questionnaire I can not determine whether there was any time devoted by *by* this owner to this business. The owner is Mr. Walter G. Land and I don't believe I am acquainted with him. There was no compensation to owners included for firm No. 79 in arriving at the net profit of $2,273.53. The statement of salaries shows that the owner sold cattle twelve months. Firm No. 88 has no salary expense whatever indicated on Exhibit C in arriving at the net profit of $144.89.

[fol. 1190] These exhibits which have been referred to are not typical of the others because they seem to be selected cases where the owners have not set up any expense for their personal services. There was included for firm 13 salaries for owners amounting to $10,200. The statement

of profit and loss shows no net income and there were three owners, one selling cattle for twelve months, $3,570; another selling cattle for twelve months, $3,570; and the third owner in the office for twelve months, $3,060.

For firm 15 there was included salaries for owners, $6,886.62. The net result of operation on the profit and loss statement was zero. Schedule 2 for that firm shows 2 owners, 1 selling cattle 12 months, $3,443.30, and the other owner selling hogs for 12 months, $3,443.32.

There is uniformity of the principle in the treatment of these audits. There was lack of uniformity in the amount involved. Naturally there is a lack of uniformity in the results produced. Some of the things that reflect in the difference in the net result are the fact that the owners of some businesses either drew no profits out or had nothing to divide, or if they drew out compensation for their service drew it out at the end of the year instead of monthly, while other owners had fixed drawing accounts and the fact that other owners may have divided the net returns monthly. The matter of owners' services might have been overlooked by the parties in authority in the firm. We certainly made requests for the information.

[fol. 1191] There is automobile expense included in 35 of these audits. there is no indication of automobile expense for firms Nos. 1, 6, 11, 13, 15, 16, 20, 25, 29, 33, 37, 43, 46, 52, 54, 56, 60, 61, 63, 65, 66, 67, 72, 76, 79, and 83. That does not mean that these remaining firms did not have automobile expense. They may have hired automobiles, the expense of which was included in their travel expense.

The gross amount or the net gain of all agencies referred to in exhibits 114-1 to 88, inclusive, was $56,742.29. That was without any additions or any deductions on the profit and loss statements of the various firms as shown in the exhibits 114. That includes 61 firms.

It may be true that nothing was set up as representative of owners' compensation in the case of some 13 of those firms. I do not know what the income of these firms would have been under the Secretary's tariff contained in the order of May 18, 1932. The consolidated information in these various audits in my opinion would have to be supplemented with additional information taken from tabulated sheets and the work papers in making an application of the tariff prescribed by the Secretary in his order. We have

the individual work papers here. I have never calculated that or made any effort to test the tariff in any way. I have never made any effort to test the tariff in effect when I made the audit or any other tariff. I do not know whether the audits and working papers contained sufficient data to enable me to apply the tariff No. 3 which became effective [fol. 1192] May 23. Under any circumstances whether I took a small portion of data or not, it would require considerable time to make the test. I have never attempted to make even a limited test of the tariff.

I find that it is impossible for me to associate the respective firms with the graduated expenses as classified in the Secretary's findings as now before me from any data that I have in my possession or that is available to me. I believe the record of the former case with all the exhibits is on the table before me but whether the calculations of the Secretary's findings are based identically on those records, I don't know. I did not write the order and I do not know who did. The same applies to the findings set out in subsequent paragraphs 117, 118, and 123. I have not received any instructions to classify costs or functional costs in the manner in which they are classified in these paragraphs of the Secretary's order to which reference has been made.

Redirect examination:

I have had no experience in testing the proposed or prescribed schedule or rates and charges to determine the revenue it would have produced in a given year.

The loss of $4,946.41 under the item "Bad Debts and Accounts Adjustments" arose from the speculative operations of an employee of the firm which developed unfavorably. He speculated on his own account and was financed by the firm. My information is based on the work papers [fol. 1193] covering the audit. The individual was a former employee who was speculating for his own account and was financed by the firm. The working papers simply show that the firm financed this employee's speculation.

In stating the net profit of all firms, I deducted from the total gain of all firms, the total loss of all firms as shown on page 13 of proposed Government Exhibit 115. Those figures of gain or of loss were arrived at after allowing as an expense of owners' salaries which were set up in the

blue audits. The amount of owners' salaries included as an expense was $373,156.20. The total net owner income for all firms shown on page 13 was $429,898.49.

Recross-examination:

With the elimination of Firms Nos. 10 and 36, the net gain of the remaining firms covered by the blue audits would be $45,107.44 for 1931. Eliminating Firms Nos. 10 and 36, the gross income under the tariff then prevailing was $1,709,989.48. The net profit for the year 1929, eliminating Firms Nos. 10 and 36, was *was* $143,171.81, and the gross income was $2,104,510.88. As to those firms, the reduction in 1931 gross income, compared with 1929, was $394,521.40. That is between 18 and 19 per cent. Reducing the gross income of the firms covered by the blue audits in 1931, with the exception of Nos. 10 and 36, by ten per cent would leave a gross of $1,538,990.53. Reducing the gross income of the firms under consideration in the year 1931 by ten per cent would result in a net loss amounting to [fol. 1194] $125,891.51. Eliminating the two firms mentioned, the net owner income was $418,263.64. The net return to owners is based solely on the blue audits and does not consider any interest on the capital investment. The depreciation shown on the blue audits, with the exception of firms 10 and 36, was $3,986.60. Eliminating firms 10 and 36, the depreciation for the year 1931, based on the appraisal made by Mr. Henrici, according to the cost study, would be $12,414.75. That is an additional expense of $8,428.15 over the figures taken from the blue audits.

The auditors under my supervision did not make an application of any tariff to the business of these respondents. I was present all the time during the preparation for this hearing. A fair test could be made of the tariff of May 23 as applied to the business for 1931. This can be done from the information contained in the blue audits and working papers. The blue audits and working papers do not disclose any information with respect to the weight of livestock. An exact application could not be made. The result would be in the nature of an estimate.

As to naming those firms which did not keep sufficiently definite memoranda for us to classify all of their expenditures, if it came to an exact application of that statement

I could name all of the firms, because they did not keep the memoranda supporting the expenditures in every instance. We rely a great deal on their classification and distribution of that through their various journals and ledgers. I am [fol. 1195] sure that there are very few firms that have full memoranda in support of all expenditures, and I am almost positive that their handling of petty cash will disclose that in practically every firm. By "full memoranda" I mean a full explanation of the nature of the expenditure. Travel is another item with which we experienced lots of difficulty. They will take $100 for instance and charge it to travel and there will be no detail whatever of the nature of the distribution of that $100 in travel expense. By "distribution" I mean the distribution of the funds for some particular service pertaining to travel. In the case of Firm No. 1 there was nothing in the records that would permit us to get an idea that the man had those expenses or how they were accrued. I do not know that this firm gave a bond to cover the requirements of the Packers and Stockyards Act. I do not know of another instance where we were unable to get the bond premium or the exchange dues.

Redirect examination:

In giving the net profits and net owner income of respondents as a whole, Firms Nos. 101 to 107 inclusive were not considered. Unless the auditor misinterpreted the instructions there would not be a stockholder of a corporation appearing as a non-owner.

Government Exhibits 114-1A to 114-107A

[fol. 1196] Recross-examination:

I personally had nothing to do with the preparation of these last exhibits that were introduced except the supervision.

Redirect examination:

By "order buyers" I mean Exhibits 114-101A to 107-A, I myself made 101, 106, 107. Mr. Bachmann made the others.

(Whereupon, the witness was excused.)

MR. JOHN J. BACHMANN, a witness called by the Government, after being sworn, testified in substance as follows:

Direct examination:

I am the same John J. Bachmann who testified at the previous hearing as chief accountant for the Packers and Stockyards Division. I still hold the position of chief accountant and have held it continuously since that time. Since that time I have been engaged in two stockyard audits and rate cases. I have been engaged in commission rate cases in St. Joseph, Missouri; St. Paul, Minnesota; National Stockyards, Illinois; and Chicago, Illinois.

I was in general supervision of the audit made of the books and records of respondents in this proceeding covering the year 1931, the same as I was in the proceeding covering the year 1929. A study was prepared on all of those firms included under the numbers 114-1 to 114-88. No statistical study was made of the order-buyers, being those numbers in the blue audit 114-101 to 114-107. I have a copy of that statistical study of operations covering the year 1931.

[fol. 1197] (Whereupon, a copy of this study was marked for identification as Government Exhibit No. 115).

The fundamental principles underlying this study are the same as those underlying Government Exhibit No. 15 which I described in my former testimony in this case. There [fol. 1198] were some minor changes in form, some variations in the set-up, and there was one change as to cost. We have eliminated from the functions included in the study items which can be classed as risk items and added that additional function. We have added the function of risk, and the items which are classified under risk were in the previous study, included under other functions.

The country commissions were included in the blue audits for 1931, but were eliminated from the statistical study of operations. I do not believe that expenses for charity and donations were eliminated in my 1929 study, but I stated that they should be eliminated. On page 15 of this study they are eliminated.

In the study of 1931, we adjusted insurance covering workmen's compensation, mortgage and theft, furniture and fixtures, and public liability. The first three were

adjusted on the basis of the rates used by Mr. Roberts in his cost study of 1929. The workmen's compensation insurance covered only non-owners' salaries. The public liability insurance was adjusted on the basis of the allowance made by the Secretary in his order. There was an additional adjustment by way of salaries. In those firms in which no owners' salaries were shown on the blue audits, we took the profits wherever we found profits and added them on to the expenses for salaries. We have done that with the feeling that it is better practice as far as a commercial cost study is concerned, without having any idea in our minds as to whether or not this is a fair measure of [fol. 1199] their work. In other words, we are not passing on the question as to whether or not this was a proper allowance for owners' salaries in a rate proceeding.

The blue audits show the insurance expenditures just as they were set up on the books of the respondents. In our cost study we did not use those exact figures, but an adjusted figure. That was on an accrual basis rather than on the basis of what was actually expended. We applied the various rates that I have described, even though the blue audits did not indicate in all cases that such expenditures had been made. From a general economic viewpoint a man is worth no more than he can make. From a rate making viewpoint, I don't know whether the drawing accounts are any indication of the value of the services of the owners of the firm. There is nothing to prevent the sole owner of a commission firm from setting up any salary that he may choose to set up for himself on his books. I could set up $100,000 as my salary, and if I only earned $1,000 a year I could pretend that the business owed me $99,000.

The figures shown on page 24 in the column headed "Exchange Soliciting and Membership Dues," were taken from the blue audits after the elimination for the insurance on the life of the members had been made. On checking over some of the firms we felt certain that all of the amounts paid to the exchange had not been included. The matter was discussed between the secretary of the exchange and myself as to the best manner of proceeding to have this additional expense included. The time was too short to get [fol. 1200] it into the statistical study. I suggested that he make an analysis of the income of the exchange by firms and submit those figures to us, and we would put them in the record in the form of an exhibit supplementing this

study. He returned with the estimates of the amounts *of the amounts* which the various firms had paid to the exchange, and on checking over these estimated figures with some of the firms which we felt had maintained accurate records, and noting that the estimated amount did not agree with the amount shown on the books, I informed him that I could not accept those figures unless I could audit them. I informed him also that I would present the estimate which he had given me at this hearing for such action as might be necessary. That record was turned over to the exchange with the other work papers and it apparently has not been returned to me. That study did show that on the estimated basis the exchange soliciting and membership dues were approximately $6,000 greater in amount than we show here on page 24 of Government Exhibit 115. I was not given an opportunity to check that estimate against the books and records of the livestock exchange. The exchange soliciting and membership dues here are classified under business-getting and maintaining expenses. That items covers the charge for the running expenses of the exchange, radio, the rate hearing, and possible some other items. The proportion of that expense for radio and for the time of the secretary spent in broadcasting and getting his information together for broadcasting is, in my [fol. 1201] opinion, a proper business-getting and maintaining expense. Other parts of this amount may not be properly classified under that heading. We had no way in which to make that analysis so that we could classify this expense under its proper function without a fairly complete statement of the expenditures of the exchange. I felt certain that in instances the estimate was not accurate. I checked firms for which I felt accurate records were kept, and I found that the amounts did not agree as between the books and the estimates. For that reason I felt that I could not accept those figures absolutely, without further examination.

Only one firm carried public liability insurance.

The methods of distribution used for indirect expenses have not changed since the 1929 study. The risk item which was not included in 1929 was distributed on the basis of head times value of the particular species. The value of the species was taken from the Government records in the Bureau of Agricultural Economics. Forty dollars was used for cattle and calves, twelve dollars was used for hogs,

and $5.50 was used for sheep. The records I refer to were taken from the yearbook of the Drovers Journal of Chicago and are reported by the United States Department of Agriculture. For 1931 all cattle had a value of $39.71 a head, hogs $11.66 a head, and sheep $5.35 a head. This calculation gives us a ratio. The reason we did not go into the books to get this information is that the time which would [fol. 1202] have had to be expended in getting it would have been quite lengthy. The information was not worth the cost of getting it if we could get information which was reasonably satisfactory in a much faster way and from a fair and reasonably accurate source. The amount of indirect risk expense in comparison to the total is slightly over 50 per cent. One half of the risk expense was directly allocated to species and only one half had to be allocated indirectly. The use of the head times value was merely to distribute the risk items of the various species. It had nothing to do with the calculation or the total risk cost to the individual firm. Pages 41 to 57 contain the analysis of commissions by species, by mode of arrival, by units, and by firms. They are based upon the statistics which were taken off the account sales of various firms. These statistics are contained in the working papers and the information is also included in the blue audits.

The fact-containing bases for the calculations contained in proposed Government exhibit 115 are Government exhibits 114 and 114-A, each with their several individual exhibits, the appraisal of Mr. Henrici, and the salary questionnaire.

(Whereupon Government Exhibit 115 was offered in evidence and ruling deferred until cross examination was had.)

I have prepared a report entitled "Differential Study of Operations, Income, and Cost, Commission Firms, Kansas City, Missouri, Livestock Market, Year 1931."

Government Exhibit 115-A

[fol. 1203] A copy of the report was marked for identification as Government Exhibit 115-A.

I did not prepare a similar report for the year 1929. We have made similar studies in the cases at St. Paul, National Stockyards, and Chicago. This report is a continuation of the cost study. It carries the cost study to its logical

conclusion, takes the composite cost by species, and breaks it down to cost by units and by modes of arrival. It differentiates the composite cost into a number of other classes of costs. This differential study is founded upon the same fact-containing bases as Exhibit 115.

These bases of distribution explained as to page 16 carry throughout this entire study. Sheets numbered from 1 to 16 are summaries of some of the information contained on the sheet from 16 and after. The headings on all of these sheets indicate what they summarize. (Whereupon the Government offered in evidence Government Exhibit 115-A.)

Government Exhibit 116

Government offered in evidence Government Exhibit 116 which is a compilation entitled "Receipts of Livestock at Kansas City Stockyards by Days, Weeks, and Months, Years 1930 and 1931, and January to September, 1932."

This exhibit was compiled under my immediate supervision. It brings down to date the information contained in Government Exhibit 16 which was introduced in evidence in the former hearing. In Government Exhibit 116 the sub- [fol. 1204] totals were not carried by weeks but they are carried by months. These figures were obtained from the records of the Bureau of Agricultural Economics which are maintained in the office of the Bureau in the Livestock Exchange at the Kansas City stockyards.

Government Exhibit 116-A and B

Government offered in evidence Government Exhibit 116-A and B which is a compilation entitled "Kansas City Livestock Market, Direct Hogs."

This exhibit brings up to date the information contained in Government Exhibits 16-A and B introduced in this proceeding at the last hearing. This exhibit was prepared under my supervision by Mr. Muse in the same manner as I testified as to Exhibit 116. This exhibit was taken from the same records as Exhibit 116.

Government Exhibit 117 and 117-A

Government offered in evidence Government Exhibit 117 and 117-A, a compilation entitled "Daily Purchases of Cattle, Packers and Butchers, for the Year 1930."

1308

This exhibit brings up to date the information contained in Exhibit 17 and 17-A introduced in the first hearing in this proceeding. This was prepared under my supervision in the same manner and from the same sources as I have testified as to the preceding exhibits.

Government Exhibit 118

The Government offered in evidence Government Exhibit [fol. 1205] 118 which is a compilation entitled "Livestock Held Over, Kansas City Stockyards, for the Years 1930, 1931, and January to September, Inclusive, 1932."

This exhibit brings up to date the information contained in Government Exhibit 18. The set-up is a little different. In Government Exhibit 18 the carry-overs in first hands are shown on the first line, and the carry-overs in second hands are shown in the second line. On Government Exhibit 118 the carry-overs in first hands are marked "First" and in second hands are marked "Second." This exhibit was prepared in the same manner as I have testified in the immediately preceding exhibits.

Government Exhibit 120-A, B, and C

The Government offered in evidence Government Exhibit 120-A, B, and C which is a compilation entitled "Livestock Weighed at the Kansas City Stockyards Covering the years 1930, 1931, and from January to September, 1932."

In general the information contained in this exhibit is of the same class and character as was contained in Government Exhibit 20-A, B, and C introduced in evidence at the former hearing in this proceeding. In Government Exhibit 20-A cattle and calves were divided as to straight lot, jackpot, combined, traders, and total. In Exhibit 120-A, B, and C the division for cattle is made only as between cattle in first hands and cattle in second hands. For hogs and sheep the information is identical. I prepared this exhibit myself [fol. 1206] from the records of the Kansas City Stockyard Company.

Government Exhibit 121

The Government offered in evidence Government Exhibit 121, a compilation entitled "Animals Slaughtered Under

Federal Meat Inspection, Kansas City, Missouri," covering the years 1930 and 1931 and January to August, inclusive, 1932.

This exhibit brings up to date the information of the same class and character as that contained in Government Exhibit 21. Government Exhibit 21 shows the information by years and Government Exhibit 121 shows it by months and years. This exhibit was prepared by Mr. Muse under my supervision from the records of the Bureau of Agricultural Economics at the Kansas City stockyards. (Whereupon Government Counsel explains to the record that at the original hearing in this proceeding there was introduced in evidence as Government Exhibit 19 a compilation entitled "Disposition of Livestock Received at the Kansas City Stockyards covering Cattle, Calves, Hogs, and Sheep for the Years 1920 to 1929, Inclusive." On that same exhibit was a table of direct shipments contained in local slaughter for the years 1920 to 1929. The first table covering the disposition of livestock will be brought up to date by offering in evidence a publication known as "Crops and Markets." The other table, covering direct shipments contained in local slaughter, is brought up to date by the column on Government Exhibit 116-A and B which shows the direct hogs received inside the yards. That is the reason why there is no Government Exhibit 119 offered in evidence.

[fol. 1207] (Whereupon the witness was temporarily excused.)

Mr. Frederick H. Olander, a witness formerly having testified, was recalled to the stand and testified as follows:

Direct examination:

I have prepared a statement showing the salaries and drawing accounts, employees and owners, of the National Livestock Commission Company for the nine months of 1932. This statement was prepared by the office manager of our company from the books and records of our business.

Government Exhibit No. 137 Introduced

In so far as this statement shows reductions as compared with the salaries shown on Government Exhibit 114-46,

some of the reductions were made effective on January 1, 1932, some on May 1, 1932, and some on June 1, 1932.

The larger consignments coming to our firm, for the most part steer cattle, are sold by the more experienced men. This type of cattle comes for the most part in carloads or more than a car-lot unit. In handling the smaller units, the men of less experience do the selling. The men who sell the car-lot stuff command larger salaries for their work than the men selling the smaller units. The first intimation that I had that those units were being handled at a considerable loss by my own organization was this morning when I saw one of the exhibits prepared by the Government. I was very much surprised and amazed to know that in the case of [fol. 1208] my own firm the expense on a straight carload of cattle was very much in excess of what I thought it would be. The cost per car for handling straight carloads was so much less than it was for the handling of truck-ins when reduced to a carload basis. My opinion would have been and is now that from a practical operating standpoint, the differentiation between the two is not as great as those figures would suggest. One reason for this is that we use the lower salaried men in handling the truck-ins.

Cross-examination:

There is considerably more expense involved in the country contact on account of rail consignments than on account of truck consignments. The owner of small units, a great many of which arrive by truck at the present time, does not request the commission firm to come and look at his livestock, as does the man who has a carload or more. A man might send 8 or 10 consignments during the year, the commission on each of which was under the sum of $5, and still not have his name placed upon the mailing list. This practice eliminates this element of business-getting cost as to such consignments.

Expenses incurred in traveling, attendance upon conventions and meetings, appraisal trips are largely on account of the rail business.

Exhibit 114-46, which is the audit of our firm, shows an expense of $3,827.02 on account of telephone and telegraph expenses, a small percentage of which was on account of [fol. 1209] livestock shipped by truck. This is one of the

items of expense that would probably show an increase due to increased taxes effective in 1932. Our audit shows $860.84 under the heading "newspaper advertising incurred in the year 1931." The major portion of that was on account of an advertisement carried in the Kansas Stockman, the official publication of the Kansas Livestock Association, and others in a few farmer guide books published in and around Kansas City.

It is true of my organization that expenses on account of circular letters in 1931 of $3,009.45, postage $2,964.50, newspaper advertising $860.84, travel, appraisal trips, meetings, and the like $2,658.70, telephone and telegraph $3,827.02, and a large proportion of the time of the most expensive man in our organization relate very largely to the straight rail business. The expenses enumerated above attach themselves very largely to cattle, so far as our firm is concerned.

Exhibit 115-A shows that the truck-in cattle of our firm was 9,866 head of cattle and calves belonging to 2,938 different customers, and 50,156 head of cattle belonging to 1,069 owners and arrived in 1,869 cars. These expenses on a per head basis would be much greater on account of the 50,156 head of rail cattle than on account of the 9,866 head of trucked cattle. The risk involved in the handling of truck consignments is considerably greater in my opinion than the risk involved in the handling of rail consignments, for the reason that you have so many more units, so many [fol. 1210] more customers to deal with, in many instances strangers, and again the truck transportation has opened up a new avenue of dishonesty and stealing livestock that has magnified the risk that we take.

In writing a schedule of reasonable rates, I think the ability of the commodity to pay should be considered. Cost of the particular service alone is not, in my judgment, the sole *quide* to be used in determining the relative charges as between the different services rendered on different species of livestock or different modes of arrival of livestock. In my opinion the per-head value of cattle arriving by rail is greater than the per-head value of cattle arriving by truck. A large percentage of our cattle truck business is made up of calves. At times the market has been so low on calves that after the expenses have been taken out there was nothing to send back to the owner. In some instances of that kind we have not charged any commission ourselves

for the sale of a small thin calf that brings around $1 or $1.50, or even less. The value of animals will range from that on a small calf up to $100 on some animal. Within the last week or so the spread in values for the different classes of cattle and calves has ranged from 60¢ to $8.75 a hundred. We have fat steers under present conditions which bring over $100 a head. There have been 1,300-pound cattle on the market this week which sold for $8.75 a cwt., which would figure in excess of $100 a head. Last week there were two cows on the market that sold for 60¢ a [fol. 1211] hundred.

It has been my observation that the flow of livestock to the market by truck is more constant so far as volume is concerned than that coming to market by rail. At certain seasons of the year rail consignments will be more than 1,000 cars the first day of the week and drop to 30 or 40 cars on Thursday or Friday of the same week, whereas the volume arriving by truck will not show as great variation as do the consignments by rail. Government Exhibit 116 shows that the receipts of cattle and calves at Kansas City for the year 1930 were 107,840 head in May and in October—232,543 head; in the year 1931—105,808 head arrived in June and 201,488 head arrived in October. We must carry a force during the month of June, at the low volume of receipts, in order to have help available at the October peak of receipts. We can't dispense with our help during the time when receipts are light and have an efficient force of employees at the time of the peak. We could save on expenses were it not for these peak loads. We have what may be termed a four day cattle market here at Kansas City. In the week beginning May 26, 1930, the number of head of cattle received at the Kansas City market was 23,364. In the week beginning October 20, 1930, the number of head received was 59,273. Our own business shows similar variation in receipts. We had to maintain our organization so as to handle the October business, which was more than twice as great as our May business. If the receipts of cattle were dis- [fol. 1212] tributed evenly over the twelve months of the year it would be possible to reduce our per unit operating expense. I think the variation in receipts at Chicago is less than it is at Kansas City. In the week beginning June 13, 1931, cattle receipts at Kansas City were 20,195. Receipts at Chicago were 39,763. Receipts at Kansas City during

the week beginning October 17, 1931, were 51,222 head. Receipts at Chicago for the same week were 50,908 head. I should say that there would be greater ease and facility in adjusting operations to volume at Chicago than is the case at Kansas City. Our firm filed Tariff No. 3, effective May 23, 1932. The first information I had with respect to a tariff of this character was at the time of the St. Joseph commission rate hearing. It was my information that a tariff of this kind had been suggested as an improvement over that under which we were operating. I liked the tariff and before it was formulated at the market at Kansas City and filed I talked with different men on the market about the scehdule and spent quite a little time in studying it and in making application of it to my own business. I like this tariff which is on a per carload basis rather than on a per consignment basis for the reason that it places the burden where the burden belongs. If a man ships a very heavy load of livestock, he pays for the number of cattle that he has in the car. That charge is graduated downward after reaching a certain number of head and it makes it possible [fol. 1213] for the man who has a large number of cattle to market, the consignments being such that they can be handled without a great amount of extra work, to take advantage of the fact that less work is required in the handling of a very large number of cattle. If 50 head of cattle of like kind arrive at market in two cars instead of one and belonged to one owner, and were sold in one lot, the only difference in handling would be that it might necessitate an extra man in bringing them from the chutes. From the standpoint of practical performance the two loads would be sold as one unit. If 50 head of cattle belonging to one owner arrived at market in two separate carloads and were delivered to our firm as one consignment there would be no substantial difference in effort or cost in handling them over what there would be in the case af another owner of 50 like cattle who sent them to market all in one 40-foot car or two 36-foot cars billed as a 40-foot car. The mode of delivery arriving solely out of the number of carloads, the number of head in the consignment being the same, makes little difference. The variation in the number of head per car and the variation in weight have increased within the last few year-. We have had some carloads of livestock that weighed 14,000 pounds. We have

had others that weighed 32,000 or 33,000 pounds. This variation has increased since the lower minimums have been adopted by the railroads. The tonnage contained in some carloads is more than twice as great as that contained in others. I do not think that the provisions in the former [fol. 1214] rates in effect at this market or the provisions in the rates prescribed in the Secretary's order allowing for $2.50 differential according to the number of head in one car resulted, or would result, in an equitable and equal incident of charges. Based on a per consignment basis the difference between a minimum of $13 and a maximum of $15.50 for 36-foot cars is $2.50. The man who loaded 30, 40, or 50 head of livestock in a car would take the maximum charge for the selling of that livestock. Such a shipment would require in most cases a greater amount of service than would be required in the handling of livestock of a man who shipped in his livestock 15 or 20 cattle to the car. The man who shipped 15 or 20 head of livestock to the car would pay proportionately a great deal more than the man who put in a much larger number of head and loaded heavily. As a general rule large gross proceeds result from large tonnage, though this is not always the case.

The commission on thirteen head of cattle under old Tariff No. 2 would be $9.75, or 75 cents a head, if those cattle were delivered by rail.

Under this tariff the commission of 15 head would be $1.00 a head. Under the tariff prescribed by the Secretary in his order of May 18 the charges on 13 head would be $9.10, or an average of 70 cents per head, whereas on 15 head the charge would be $13.00, or an average of 86 cents per head.

Under the tariff effective May 23, 1932, that is Tariff [fol. 1215] No. 3, the charge on cattle, weighing over 800 pounds per head would be 70 cents a head, for 13 cattle or $9.10 and would be 70 cents for 15 cattle or $10.50. The per head charge does not increase as the number of head in a consignment increases up to 20 head. It decreases after 20 head.

The charges on a carload of 28 head of cattle under the old rate were $19.00, or approximately 68 cents a head. The charges under the tariff prescribed by the Secretary provided the charge would be $15.50 for 28 head of cattle arriving in one 36-foot car, or approximately 55 cents per

head. If they arrived in a 40-foot car, it would be approximately 59 cents a head.

About 85 per cent of the cattle arriving at Kansas City last year arrived by rail and approximately 15 per cent by truck. The receipts of hogs by truck at Kansas City in 1931 were 51 per cent of the total volume. The rail receipts 49 per cent.

I am principally concerned with cattle. My firm, however, handles hogs and sheep to some extent. Every commission firm is interested in getting volume on the market. The hog business is gradually diminishing on the market. My own idea with respect to hogs was that the rates should be made low in order to find out whether it would be possible to get the hogs back on the market. I don't think there was any consideration given as to whether or not this particular hog rate would be remunerative. It was made with the desire to have a cheap hog rate in order to bring [fol. 1216] the hogs back to the open market. It is my opinion that if the majority of the hogs of this country were marketed through the open markets that a truer value of the hogs would be registered than is being done, when the large percentage of hogs go direct to the packers. The producer would get a better price for his hogs.

I do not think that the handling of a single calf and of a single head of cattle warrants the charge prescribed in the order of the Secretary. The charge prescribed in the Secretary's order on account of single head consignments is greater than that formerly prevailing.

There was a rather general sentiment that not the cost of handling but the depressed condition of the business should have weight in the prescribing of the charges for single head consignments.

In arriving at my conclusion with respect to Tariff No. 3, I did not give particular consideration to the cost of handling truck-ins as compared with the cost of handling rail consignments. It is pretty hard to make the owner of cattle, who ships by truck, believe that it is worth any more to sell cattle, simply because they arrive by truck, than it would be worth if he had shipped them in a railroad car. Simplicity in a tariff is very desirable.

I had no particular difficulty in applying Tariff No. 3 to past consignments received by our firm. The work went [fol. 1217] along very nicely. There are objections to

Tariff No. 3 on the part of bookkeepers who apply the tariff. The account salesmen in our firm thought that this new tariff was something that they should not have to contend with. They became accustomed to a certain tariff over a long period of years. It becomes simple for them to apply it and a change means that they have to do it differently from what they are accustomed to do. It is quite natural that some complaint and criticism should arise.

This objection wears off as they become more familiar with the new tariff. This is true in case of our own firm. Since the first week of the application of the new tariff criticism has been practically eliminated altogether. The account salesmen in our office seem able to apply this tariff with the same relative degree of speed as in the case of former tariff. The application of Tariff No. 3 to our business resulted in approximately a 10 per cent decrease in the cattle commissions and around 16 to 17 per cent in hog commissions. I made no application of the tariff to sheep. We handle a comparatively small volume of sheep.

It is the turnover under the rates charged that has the greatest effect in determining the gross yield of any of these tariffs constructed on a unit basis. As between dif- [fol. 1218] ferent classifications of livestock, separately rated, the turnover under the different rates may vary as between the different markets.

The value of the commodity handled did have something to do with my judgment as to the proper amount of the commission charged. I gave it consideration rather than the primary cost of handling. If we are going to follow out the policy of putting the burden on the commodity that is best able to pay I believe this should be done.

Tariff No. 3 which went into effect on May 23, 1932, makes an adjustment in this general direction from former tariffs. The calf charge is the same on the first 20 head as contained in the Secretary's order. The charge on heavy cattle as to the first 20 head is 10 cents per head in excess of the charge contained in the Secretary's order, headage charge only being considered. I think that Tariff No. 3 is susceptible of still further adjustments if primary consideration is to be given to the ability of the traffic to pay the charge.

The National Livestock Commission Company represents as buyer on this market John Morrell & Company with headquarters at Ottumwa, Iowa, which company clears

cattle purchased for the Milner Packing Company at Frankfort, Indiana. We buy all the cattle bought on this market for John Morrell & Company. We buy stockers and feeders in substantial amount for country men. A great deal more time is expended in the purchase of stocker and feeder [fol. 1219] cattle than there is in the purchase of fat cattle for packers.

On the 13th and 14th of September of this year we had out as the result of purchases we had made for packers and others in the course of the two days $119,000. It has been my observation that the man who is an owner of a business at this market puts in more hours, makes the greatest effort possible to serve the customers and that as a general rule is more valuable to his customers by reason of that application. The owner has little regard for the number of hours a day he works or the number of days in a week he works. I have noticed that long after most of the employees have left the yards, having finished their duties, that the owners of the businesses are there. If I should leave the commission business and go into the production of livestock I would feel that an owner salesman at this market would better serve me than some employee. I say at the same time, however, that there are exceptions and there are no doubt employees who will strive just as hard as the owner.

It is impossible in the actual operation of the business to maintain an even keel and an even flow of all types of business. I wish it were possible to do so. It would be an ideal condition in the livestock trade if the receipts came to us in a uniform flow over six days a week but climatic conditions and other conditions work against that. Our market letter this week carries the suggestion that the shipment of cattle should be held to a very low volume next [fol. 1220] week. The congested condition in the beef trade makes it necessary to throw out that suggestion to the trade. Very likely next week our volume of fat steer cattle will be low if they heed that advice. That is just one condition that makes impossible the chance of receiving the volume of livestock in an orderly, even volume. We must receive shipments as they come to us. If they all come on Monday we must receive them and handle them at that time and if they are low on Wednesday, Thursday and Friday, as they usually are at the end of the week, we must have a

force there that is capable of taking care of that peak day in the week. On many days there is not sufficient work there for all the employees over a full day's time. This is one of the conditions that confronts us in this business. I wish it were possible to have some control over it in order that we might have an orderly marketing program. If we could have this it would be better for all concerned. There is probably not one firm at the Kansas City market that has a business in hogs, sheep and cattle all on a relatively high average volume. Some of the firms are high in cattle and low in sheep, others are high in hogs and low in cattle. My own firm is high on cattle and low on sheep and in the middle class on hogs. Yet, we strive to build up a volume of hog business. We should like to be among the top volume in hogs but it is not the case and we have to accept the condition as it is and make the best of it.

[fol. 1221] I am continually turning over in my mind on each business day at the yard the thought of who may be the best buyer for the particular class of cattle I have to sell on a particular day. Conditions as exist at the present time are quite different with respect to buyers from what they have been. Recently the condition in the fat cattle market has been one that brings the buyer out on the market in the morning for a window-shopping tour. They want to find out what is on the market. They do not care to place any bids except perhaps on a particular lot which may exactly suit them. The character of the packer demand for cattle has changed. Greater discrimination is made between grades. The salesman cannot simply stay in his alley and expect the best buyers always to come to his pens. He has to be on the lookout all the time for buyers. I had reason to believe recently that a certain packer buyer would be a good active buyer on Monday because of his connections on the previous Monday. He buys most of his cattle in a part of the yard some distance from where my pens are located. I looked him up, brought him over to my pens and — successful in selling him a substantial number of loads of cattle at from 35 cents to 40 cents a hundred more than I had been bid by other buyers who had looked at them. Had I remained in my alleys and waited for him to come I might not have gotten him at all until after he had filled his order elsewhere. A salesman must be alert,

he must be aggressive if he is going to get the best possible [fol. 1222] result for his customer.

In the particular cattle to which I have made reference the weights would run from approximately 1,000 pounds up to 1,200 pounds and the 35 cents or 40 cents a hundred would have meant from $2.50 to $3.00 a head. This is five times the commission charge. I want every buyer on the market to know what I have. When the buyer goes out in the morning he may not have an order at that particular time for the particular class of cattle that I have to offer. Later on in the day orders may come to him by message or by runner to buy certain other classes of cattle. If he knows that I have them there would be a tendency on his part to come to see them.

There are very few times that an active livestock salesman sits on the fence. If I had 10 or 12 carloads split according to quality in 30 different classifications I would not have the time and opportunity to enlist particular buyers to the extent that I would have if I had only a few separate classifications or bunches. I do not believe there has ever been a time in the history of the livestock markets in this country where the buyers operate under such strict limits as do the packer buyers today. This situation has been brought about by a discriminating consumer demand. This has tended to make the salesman's job a more difficult one, one that places upon him a high nervous strain because of the uncertainty as to buyer requirements. The grading of beef in packers' hands has tended to cause the [fol. 1223] buyer to place an estimate as to grade of cattle on the hoof before he actually buys them. He tries to picture what an animal will look like on the hoof. All these conditions have tended to make the salesman's job a more difficult one. It is the salesman's desire to perform with the highest degree of efficiency. This taxes the salesman to the limit. The conditions prevail with respect to fat steers more than with respect to any other grade of cattle.

The factors that I mentioned in my former testimony such as the competition of direct buying, competition afforded by financial aid given to certain cooperative agencies, the widely extended area from which this market draws its livestock, are all still present. In my one particular business we cannot with any degree of efficiency

serve our customers if I had to sell thin cattle along with the fat cattle.

Redirect examination:

We try to keep the personnel at a number that we feel will be consistent with good service. The facts of the matter are we carry an organization intact throughout the year and add extra men during the fall, during the heavy months. Those extra men would be yardmen just following cattle from the railroad to the pens and helping in the sorting, watering, feeding and weighing. We do not employ extra help in the office during these heavy runs.

The first time I ever heard anything about a schedule like Tariff No. 3 was after the conclusion of the hearing [fol. 1224] at St. Joseph. It was first brought to my attention in a discussion I had with Mr. J. W. Roberts. He was the accountant employed by the respondents who are members of the Kansas City Live Stock Exchange. I was present at a number of meetings that were held to discuss this particular tariff. Those were meetings of the members of the Exchange. The tariff which was the basis of consideration was in the first instance one prepared by Mr. Gage, respondents' counsel, and Mr. Roberts. At the times that I discussed this particular tariff with other members it was in consideration of trying to arrive at a tariff that would produce a reduction below the one that we had been working under and yet one that would be fair and reasonable under the circumstances. We thought that it would be simple in structure and apply more equitably to the business we handled. I was present when all three species were under discussion and consideration. The respondent members of the Exchange all finally filed this same tariff. I stated this morning that this tariff was not satisfactory to me in all respects, but for the sake of rate uniformity my firm filed the tariff. I think all the members realize the advantage of rate uniformity at a market.

I think that a tariff that would remunerate the commission men at one market for their services, where that market was primarily a market receiving a great volume of truck-ins, might be ruinous where the greater volume of livestock was received by rail. That was my reaction to the tariff proposed by the Secretary for this market. It

[fol. 1225] was ruinous on straight carload consignments, and that composes 75% of our cattle and calf business. Even at Kansas City there will be firms the greater part of whose volume arrives by rail, and there will be other firms that a greater part of whose volume arrives by truck.

I do not feel that any employee that I might employ can do as good a job of selling livestock as I can myself. It would be my idea that that would apply generally throughout the market. One man's best may not be as good as another man's best. I think that "best" is best exemplified in the case of owner-salesman whose success in the business depends altogether and entirely on their record and the service that they render. I think that the average farmer shipping livestock to the country is better satisfied with the efforts of an owner-salesman than he is of an employee-salesman. A letter to one of the owners of our firm just this week from a man in Texas who consigned us two cars of calves said: "Now, if you are not going to handle these calves yourself, I want you to personally supervise the work because I am looking to you, because I don't know who sells your calves." The average man in the country figures that a calf salesman is not an owner in the business. I think I would be better satisfied if I patronized a firm that was organized so that the owner sold the cattle and the hogs. There would be no way of determining whether owner-salesmen actually get the higher prices for the livestock. I do not want to let the inference be made [fol. 1226] in my testimony that I don't think that employee-salesmen can get the top prices. They can get the top prices. The distinction that I am trying to draw is between the interest that the average owner-salesman takes as compared with the employee-salesman. I mean the interest in building up the business, working longer hours to the advantage of the business, and the actual effort in selling the livestock on the market. It would be a fine condition if the livestock would come in an even flow to the market five or six days of the week. It seems like it is an impossibility. I have participated in meetings that combined livestock producers, railroads, packers, and commission men, for the purpose of trying to see if something could not be worked out, but nothing has been accomplished. I do think that our market here, with the great bulk of the cattle coming the first two days of the week,

that condition is accentuated by reason of the large volume of stocker and feeder cattle. At this particular time of the year, on Mondays, with twenty or thirty thousand cattle, a very small percentage is fat cattle. They come in many instances from points quite distant from the market. A ranch-man uses the week-end to round up his cattle, and a large percentage of them shipping stockers and feeders like to get there on Monday for the reason that they figure that most of the bargains from the outstanding Corn Belt points will be there on Monday, and furthermore the local buying agencies will have their pens clear and be ready and anxious to take on a fresh supply.

[fol. 1227] There have been a number of firms at this market that have combined their hog business and turned it over to one man that formerly had individual hog salesmen of their own. We have conditions here confronting the business at this market that are not applicable to some other markets to as great an extent. Those conditions contribute to increasing the unit cost.

Recross-examination:

The only way to determine accurately the yield of income from a given schedule of charges would be the actual application to the business as it comes. That would be necessary both from the standpoint of the user of the service and the provider of the service. A man with a few head of cattle very seldom obtains the attendance of commission men in the appraisal of their few head.

The entire expense of appraisal and contact work in the country is on livestock that approximates load lots or more than load lots. I think it can be accurately stated that in all firms more than 90 per cent of the expense incident to country appraisals should go on consignments of a carload or more.

Redirect examination:

In the case of cattle owned by speculators, we only take them for the purpose of sale when we can conveniently handle them. There are days when we do not handle any because of the fact that the fresh arrivals are in sufficient numbers to preclude the handling of seconds. I have [fol. 1228] always looked on the handling of seconds as

being more or less of a fill-in proposition. We tell the trader that we do not have the room to handle their cattle on a particular day and they do not receive the same amount of service that the fresh arrivals do.

Recross-examination:

If we get a bunch of cattle that take a heavy fill, we are very anxious to get early action on those cattle if possible in order to get that weight over the scales. That means that a salesman will get out and try to find an early buyer for a lot of cattle that have that fill, because in doing so he can better serve the interests of the owner. The 1200 pound fat steer will take on from 25 to 40 pounds.

(Whereupon the witness was excused.)

Mr. John J. Bachmann, a witness called by the Government, having previously been sworn, testified in substance as follows:

Direct examination:

On page 15 of Government Exhibit 115 under the head of "Clearance and Loan, Salaries," there was apparently included as an elimination the salaries for selling those head handled on a split-commission basis. Those salaries should not have been eliminated in the cost study. The adjustment can readily be made by eliminating from that column any salaries which have to do with the selling of livestock on a split-commission basis, and including them under these salaries in their proper places. I have the questionnaire which has been mentioned frequently in my testimony. The questionnaire was drawn up for the pur- [fol. 1229] pose of distribution of salaries mainly. There is included in it the distribution of office facilities. It contains, in addition to the firm designation, the names of the various employees, the numbers as given to them by us, whether they were owners or employees, their main duty, the amount of salary, compensation, or withdrawals, and the distribution to functions which have to do with the commission business or functions which have to do with the loan business or other business. That questionnaire is contained on blank forms that were prepared un-

der my supervision. It contains the number of exchange memberships held by each firm. Each firm has a separate set of sheets. The entire skeleton information up to the point of distribution was entered by Mr. Svoboda, a senior accountant working under my supervision. That information was entered from the blue audits. The questionnaire was then turned over to the secretary of the exchange, and he and Mr. Svoboda, together with the employees or officers of the various firms, except the two cooperatives, made the distribution after discussion with the respective companies. They placed on each questionnaire the percentage of time which the individual devoted to any particular function. The remainder of the work was then mechanical.

Government Exhibit 115-B

(Whereupon the Government asked that the questionnaire be marked for identification as Government Exhibit No. 115-B.)

The questionnaire contains a sheet or sheets covering [fol. 1230] each of the cooperatives. In those two cases Mr. Svoboda worked directly with the officers of the cooperatives without the assistance of the secretary of the Exchange.

From the information that we have in the work papers an exact test on the tariff prescribed by the Secretary in his order can be made in the case of most firms. The firms that I would except from that would be those firms which had their account sales filed in alphabetical order. In the case of those firms where there are plural ownerships it would be difficult, if not impossible, to identify the livestock of the various consignors with the particular consignment in which they all shipped their cattle or their livestock. We would not have the information exactly as to whether or not a certain individual's livestock came with another individual livestock. It could be determined in some cases from the working papers as to which firms filed the account sales alphabetically. We did not take off the information as to the relative weights of head in the consignment and could not accurately and exactly test a tariff of that kind. Our information does distinguish between cattle and calves on the basis of the 400 pound weight. I have made three tests of Tariff No. 3, the first

covered by species for the year 1929, the next two covered only the species cattle for the year 1931. The first step would be a comparison of the old tariff with Tariff No. 3. In examining our cost study for 1929 I noted that the composite head income for cattle was approximately 65¢ [fol. 1231] to 66¢. In examining Tariff No. 3 and noting the per head charges, and having some information as to how the head ran as to weights, I could determine approximately that the new tariff would bring in an average of about 65¢ per head for cattle without any test whatsoever.

It was immediately apparent that the Tariff No. 3 had not made any great cuts in the cattle rate. That preliminary test is only made to give an idea as to the comparative increase or decrease in a proposed tariff as compared with an existing tariff. The next thing is to make as exact a mathematical text as is possible with the information which the individual has. In making a test of proposed Tariff No. 3 we had commissions which had been received under the old tariff by mode of arrival. We had also analyzed by mode of arrival the cars or equivalent cars, decks, head, account sales, owners, drafts and commissions. The thing that we lacked, which we did not have, was how the head varied by weights. I made an inquiry from those who had been on this market and should know something about the weights as they ran. I assumed that that provision meant 20 head in a draft and that draft being by sales classification. I had in mind that the first 20 head of a draft were to be assessed with a higher charge rather than the first 20 head of a consignment. I did not attempt to ascertain the total revenues of each firm by firms. I determined the total revenue from the market as a whole. My original test for 1929 showed that the old tariff produced $2,254.166. [fol. 1232] Tariff No. 3 would, under my estimate, produce $2,158,640, or approximately a 4% cut. I did not complete the information in its entirety in test No. 2. Nor was the third test as complete as the first one was. They were for the purposes only of checking up on my original estimate and checking up in the light of the new data which I had gotten and the interpretation which had been placed on No. 3.

I made a third test only for the species cattle and only for those particular tariffs which applied to the selling of fresh animals. In the third test I did not compare the

revenues actually derived during 1931 from the tariff in effect during that year with the revenue which would have been derived in that year had tariff No. 3 been in effect. My test on fresh cattle showed that there would be some modification of my original estimate, but that such change would not be very material. When we arrived in Kansas City we had a conference with the various Exchange members. In the course of that conversation I stated that I had made a test on Tariff No. 3 and arrived at the conclusion that it would produce a 4% cut. I was told that the Exchange had made a test which showed an 11% cut.

Under cattle arriving by truck, the classification of from 2 to 20 head gave us some difficulty of interpretation, although we interpreted that the first head should be charged 80 cents.

Owners capital, shown on Exhibit B of form No. 101 represents the difference between the assets which the firm [fol. 1233] has and *and* the liabilities to outsiders. It is the owners' equity in the business. I heard the testimony of Mr. Maurer in this proceeding stating the amount of capital which he employed in his business. He testified that all that capital was necessary in the conduct of his business. The actual amount of capital which he used was $108,000. In my opinion, it does not all relate to the order buying business. The item "Accounts Receivable, others $98,253.58," includes an item of $26,115.42, being an advance on cattle and calves on a ranch. There is another item included in that, being $25,907.30, due to the firm from the J. J. Major Packing Company. There is another item in there which is a charge to the Parkville Farm in the amount of $46,200.86. Those three items apparently are not applicable to the order buying business. If those three items were eliminated from the assets of the company and the remainder of the assets were assumed to be the proper capital of the order buying business, there would remain only about $10,000. I believe that Mr. Maurer stated that he operated two farms. I understand that Mr. Maurer is the owner of the Major Packing Company and that it is managed by his son. That information is shown on the work sheet and was taken from the books and records or from the Respondent himself.

Cross-examination:

The first so-called test of the effect of tariff No. 3 was made about May 9, 10, and 11, 1932. I do not have available the data which I then submitted. I have the memoran- [fol. 1234] dum and the final summary figures. I submitted the results of my test to my immediate superior on May 11, 1932. That was prior to the effective date of the tariff of May 23, 1932. In that letter I stated the following: "Our analysis and estimate shows that had this tariff been in effect for the year 1929 the amount of gross revenue, which it would have produced, is $2;158,640.00. If this amount is compared with the actual gross revenues received, the result would be a decrease of approximately $95,000.00 in favor of the proposed tariff or approximately a 4 per cent cut. The estimate for cattle and calves is based on the assumption that two-thirds of the receipts are stockers and feeders and would, therefore, receive the lower charge." I calculated this according to the information that I had available on the basis of the rates, specially in cattle applied to drafts and not to consignments. The head, cars, decks, account sales, owners and drafts were all analyzed by mode of arrival. By comparing all of that information and associating it, it was evident that for some modes of arrival, the number of drafts which contain 20 head or more were negligible, if not zero. That information has been substantiated by our analysis in 1931. I made the second test about three weeks ago and the third test was made about four or five days ago. I did not have the number of consignments. Before I made my tests there was prepared for me the number of cars containing the varying number of head. That information was abstracted from the work [fol. 1235] sheets underlying the 1929 audits by clerks working under my direction at Washington. I made a thorough examination of everything we have here and have not been able to locate those work sheets.

I recall that a reporter was there. At that conference the question came up as to what percentage reduction tariff No. 3 would result in. The question was put to me whether or not if it could be shown that tariff No. 3 produced a 10 or 11 per cent cut, the Department would change its decision to hold a second rate hearing. I was requested to get in touch with my immediate superior by long distance telephone, which I did, and brought back the report that

my superiors thought that the question of what the cut in gross revenue was, was not material to the issue. I stated that it would not change the decision which had been reached by the Department and that the Department felt that a percentage cut in revenue was not a test of the reasonableness of unit cost nor whether or not any tariff meets those reasonable costs. I interpreted Section D entitled "Application of Charges," to mean specified sales classifications in accordance with drafts. I understood the sentence which reads as follows: "A consignment shall consist of livestock of the same species, consigned in the name of one individual or firm, and delivered to a single market agency on the same business day." I could not see the relationship of the definition of a consignment to the rest of the tariff at that time. I had previously read Section A in regard to the weight classification of cattle and [fol. 1236] calves and the major classifications, as between those arriving by rail and arriving by truck. It did not come to mind that these were the specified classifications referred to in Section D. The first time I ever got clearly in my mind what was meant by weight drafts was since this hearing has been going on. The weight factor was not given any consideration in our analysis of the account sales. I recall that Respondents' counsel requested us to get certain information. I made an estimate of the time it would take us with the staff which we had at Kansas City. I estimated that it would take approximately 9 months to get that information. I can apply this tariff without getting that information as to the business of any individual firm. Collectively, I can make a pretty accurate estimate and in the case of most firms I can individually on each consignment in most cases make an exact computation from the information we have. I have not done that. I have collected enough information to make a test but not in order to make an application of the tariff to make an exact computation, I would have to have the weight information. I can only make a test for the firm as a whole and classify 45 per cent of their consignments into the 400 to 800 pound class and classify 55 per cent of the animals into the 800 pounds and over class. They are going to run that way on an average.

I have made it perfectly clear that I would have to have the information as to weights on a particular consignment

in order to apply the tariff to a single consignment. There [fol. 1237] is the work sheet on which I retested for the third time the species cattle. I set up the varying rates in the tariff and analyzed the number of head coming within those various head charges on a estimated basis.

Respondents' Exhibit 200

This sheet shows that the interpretation was not yet placed on the 80-cent charge, because I have animals classified under 80 cents. I understand now, in the light of Mr. Olander's testimony, that there is no such thing as an 80-cent animal, except single head in a single consignment. According to my test, the normal for the market of those running in excess of 20 head in an individual consignment would be 45 per cent. An examination of the work papers in this case leads me to believe that 45 per cent is normal. That is not a pure, unadulterated guess. I have here analysis by consignments of Firm No. 63 for straight cars, single ownerships. A fifty-fifty-break would require an average of 40 head to a consignment, but they don't do that. You will not find an average per consignment of 50 head. On the first page of this exhibit they average about 70 head of cattle to a consignment. Twenty-eight per cent of the cattle on the first page took the higher rate and 72 per cent took the lower rate.

I figured that about 45 per cent of straight single ownerships would fall 20 head or over and 55 per cent would fall 20 head or under. I determined that 262,344 head would take the 70-cent rate.

I personally do not like averages. If I had used aver- [fol. 1238] ages, I would have taken 33⅓ and 66⅔. I increased the 33⅓ to 45 percent to be certain that I was conservative. I did not use averages in this particular case. I arrived at a fairly accurate estimate, but an accurate result I could not arrive at. For the purpose of my third test, I took an estimate of the weight and arrived at what I considered a normal of the number of head that were below 20 in a consignment and the number of head that were over 20 in a consignment.

At the time we made the second test we had already completed the analysis of 25 per cent of the scale tickets of the stockyards. That analysis showed that 45 per cent came within the class of 400 to 800 pounds. The average

from year to year would run from 35 to 45 per cent. I computed that on the basis of 1931 receipts. That comprehended the total of the animals at the market, eliminating traders' sales. It took the market as a whole and in that sense it was not an average.

In my original test I took five per cent of the cattle as coming 20 head or over to a draft. In the light of the present interpretation that was wrong, because it was not 20 head of the draft, but 20 head of a consignment. I adjusted the five per cent to 50 per cent, and I applied the single-ownership rate only to single ownerships, or consignments of one head, or truckins.

As I calculated it the first time, my original estimate showed a reduction slightly under four per cent. The next one slightly over four per cent, and the third test would [fol. 1239] come to about five per cent.

Under the old tariff hogs produced $536,488. We estimated that if the new tariff had been in effect in 1929, hogs would have produced $460,300, or approximately a 14 per cent cut. On sheep the old tariff produced $175,405. The new tariff under our estimate showed an income of $173,150, or slightly over one per cent decrease.

In the differentials study the distribution to mode of arrival within the species was made on the basis of head and drafts for selling salaries and the basis for distribution of buying salaries was buying head and buying drafts. One hundred per cent represented the total of all head and all drafts added together. I felt that the method of combining the head and drafts would be closer to the fact that by using either the head ratio or the draft ratio alone. I had no purpose except to determine as best I could what it cost to handle the various consignments in the varying modes of arrival. It was apparent that either of those two methods was an extreme so I combined the two of them to throw it in between somewhere. I feel that it is a ridiculous comparison to say that this method is like adding apples and pears together to get oranges.

When you analyze the work that the individual does it is related to account sales, owners, and drafts. The same situation applies here on head and drafts. It gives us a basis for distribution. The effect of the combination was [fol. 1240] to assign more of the expense to the arrival account represented by the rail consignments on account

of there being a greater number of head per draft than the arrival account represented by drive-ins on account of there being a lesser number of head per draft. The rail percentage of cost distributed on this basis in drafts containing one head to a draft as compared to livestock sold in drafts containing 10 head to the draft would be 11 to 2. Suppose we have two drafts and we have 11 animals. Suppose it cost $1.30 to handle those two consignments for salesmanship. For the consignment having one head and one draft, it would then cost 20 cents, or 20 cents an animal. For the drafts containing 10 animals, it would cost $1.10, or 11 cents per animal.

I was talking about statistics for the years 1929, 1930, and 1931. Instructions to auditors were changed in some minor details. The matter of gathering data was changed little if any. The change was mostly in the form of a set-up of the final statements. The instructions were to get everything they could with a reasonable expenditure of time.

There was no change with respect to the gathering of any unbooked items. I do not know how the change came about in set-up, except assessments. In the audits made in 1932 a general heading of Exchange Soliciting was carried into the audit and the lump sum figured without any classification of such expenditures. The change may have come about by reason of the way in which it was handled in the preparation for a conference in the Chicago case. While [fol. 1241] the profit and loss statement on Form PS-3 has an item of "Exchange Assessments and Dues," the heading in these last audits is "Exchange Soliciting." I tried to make an investigation in Kansas City. I was told that there was a part of that expense which was applicable to the amortization of the cost of the previous rate hearing. I do not think that the Exchange solicits for any individual members and do not have any field men out soliciting business that I know of. The only activity of that kind that I know of would be the cost of the radio market reports and the cost of salaries and gathering information and making the broadcast. I would classify it under a broad definition of soliciting expense. I do not know whether I would classify the bulletin board in the lobby as soliciting expense.

There was no uniformity so far as the books were kept. There was uniformity so far as the blue audits were con-

cerned. Every accountant put it down as he found it. That resulted in non-uniformity of general results as far as net gain or loss is concerned in respect to the several audits.

I do recall that on business-getting and maintaining there was used the record which the Exchange has as to the number of days which individuals spent in the field. All other items can be and in fact were reduced to a percentage basis. Except as to the number of days spent in the field, the other percentages were a matter of estimate. They were an estimate in the case of every individual [fol. 1242] where he spends his time at more than one function. This estimate was made in September, 1932. The breaking down of the total time to functions is an estimate and it may be that an individual in a small way put a little bit too much in one function and maybe not enough in another.

I certainly do not agree to any such method of appraisal of the value of owners' services as the one which was put into the record in the previous hearing. The method of appraisal used here in the first hearing and subsequently in other hearings and any method similar to that is subject to the logical fallacy of reduction to an absurdity for the reason that some of these appraisals have shown that in some cases the selling salaries for a car of livestock would be $25 per car or more. That does not appeal to me as being at all reasonable. I did not attempt to make any appraisal. I feel that the method that was used in the Tagg Brothers and Moorhead case is sound in that it sets up as a reasonable cost for rendering selling service the price at which that service can be bought.

In exhibits which have been introduced I have attempted to set up unit costs but not reasonable costs. Its function is to assist in the determination of reasonable unit costs. We attempted to set up costs as they actually existed in so far as we could determine them. I have stated repeatedly that it is not my province to determine reasonable costs. I went as far as I could on that question in determining what [fol. 1243] the reasonable selling cost should be. The secretary determined what a good salesman was worth and then set opposite to that worth the reasonable volume to be handled for such a salesman. I was trying to determine actual costs as best I could. My personal acquaintance with the owners is not such as to enable me to determine and

fairly adjudge their true worth to the patrons of the market or what constitutes a fair compensation for them. In my opinion nobody can determine that. That is very much a matter of opinion and varies with different individuals. I used my judgment in determining the amounts set into the cost study as represen-tive of the cost value of owners' services. I came to the conclusion that the best way to handle it was to put them down as we found them. I don't see how I could have utilized the Secretar-'s method of appraisal or could have used the appraised value of these owners' salaries as applicable to the year 1929.

This hearing or rehearing was granted on the theory of changed conditions. I made no investigation outside of what is found in these exhibits as to what the changed conditions were. The amount of $46,326.12 represents salaries of owners not shown on the blue audits as salaries, but were profits. We set those profits up in lieu of salaries. The elimination of salaries for clearance and loans is made on the theory that [illegible] functions were not a part of the commission business as such. In so doing I exercised my own judgment. As to Firm No. 1, if I had calculated that firm on a net profit basis as to the salary account of the owner, the amount set into the cost study would have been [fol. 1244] $1,448.08 instead of $2,400. As to Firm No. 4, there was a net gain at the end of the year of $998.62. The amount set into the cost study was $450 representing the sums drawn during the three months of the year. If I had figured that firm on the same basis as I figured those other firms the amount of owners' salaries would have been $1,448.62. In Firm No. 5 the owners' salary account balances out exactly against the net profit. It is one of those firms where I added in the net profit and made substitution of figures from the blue audits. In connection with Firm No. 6 owners' salaries taken into the cost study amounted to $6,900. The company shows a net loss of $2,138.38. If I had adjusted all the owners' salaries for whatever profit or loss was shown for 1931 the amount which I would have set into the cost study would have been $4,761.62. As to Firm No. 7, the owners' salaries amounted to $8,475 and the net loss was $958.15. No owners' salaries were shown in Firm No. 9. The net profit was $1,572.62. I set that net profit into my cost study as I did in the other instances where no owners' salaries were shown on the blue audits.

Firm No. 11 showed no owners' salary and a net loss of $452.95. No change was made from the blue audits as to that firm. If we were to go through all the firms one by one there would exist a lack of uniformity. The method was uniform; it is the books that are not uniform. If there was a profit we set the profit up in lieu of salary where there [fol. 1245] was no salary shown. Where salaries were shown, salaries were taken. Where there was no net profit nor salary, we took nothing.

No two firms are identical as a matter of fact. The result of the cost study varies with varying conditions that we found. When I excluded the loan salaries I arrived at my judgment with all the facts before me that I could get. The loan business is a banking business or a financial business. We are regulating here commission rates and not banking rates.

I also struck out the amount of time of employees and owners devoted to selling livestock on a split commission basis. That was a mistake and it can be determined from the questionnaire what proportion of the salaries listed under clearance and loan salaries are applicable to the split commission volume. That amount should, under our theory, be transferred back into the unit costs that are allowable.

The blue audits being based on the books were not very uniform in respect to depreciation of any kind. Very few firms had booked that expense. In respect to automobile depreciation a large number of firms failed to include any expense. Uniformity is not the main requisite. What they actually incurred is the requisite.

Firms 10 and 36 took too much depreciation on their books during the year 1931. Those eliminations are an adjustment to make what they took on their books conform to our calculation.

Workmen's compensation was calculated on the basis of [fol. 1246] non-owners' salaries. It is my understanding that an owner does not insure himself under a workmen's compensation policy. He insures his employees to protect himself for injuries to them. I took none of the owners' salaries, not even where the firm was a corporation and the owners were stockholders.

The straight line method of depreciation produced an amount of total depreciation of $19,519. The amount produced by the sinking fund method was $15,739. The next

column of expense elimination relates to charity and donations. Those were the amounts eliminated from the expense shown on the profit and loss statements in the blue audits of these firms. If these community chests did not exist I do not think that it would necessarily mean that the public would have to take care of the situation by increasing the tax burden.

Under the next heading of "Bad Debts and Loans" I did not eliminate all items representative or bad debts and losses shown on the blue audits as sustained by the several agencies in their business operations during the year 1931. If there was a small bad debt in the nature of an advance to an individual, for instance, it was not eliminated. But if it applied to loans, or if the amount was out of the ordinary, every one of those was eliminated. If it is a small amount, it is relatively unimportant. If it is a large amount it does become very important. I don't feel that amortization applies to bad debts for the reason that the company if it wants to take a long chance on an item of that kind [fol. 1247] ought to assume the risk itself and not try to pass it on to somebody else. My reason for eliminating it was possibly the judgment which the Secretary had expressed on the matter and also the lack of judgment, or at least no other judgment, on the part of the firm for taking a risk of such a character and then trying to assess a risk of that kind of a loss back to the shipper. The same reason that applied to bad debts applies to refusal of purchases which entered into one item there of $12,587.03. From the information I infer that the company on its own initiative took a long chance on shipping out that livestock and getting its money back and had to take the livestock back again and take that loss on it. The total amount under the heading "Refusal of Purchases" is $13,962.28, of which about 85% is applicable to one firm. After having refreshed my recollection as to Form P. S.-3, I will state that the gross value of purchases is stated separately from the gross value of sales. Those annual reports all go over my desk and the statistics that I gathered from them all go over my desk, but I do not attempt to remember any of them. The net gain made by the agencies at the Kansas City stockyards was less in 1931 than it was in 1929. I do not know as to the gross value of livestock sold and purchased. I understand that the Exchange is registered as a market agency but it was not cited as a respondent in

this case. I do not concede that an investment in an Exchange membership is necessary for the conduct of a com- [fol. 1248] mission business. A market can operate without there being an exchange. A group of individuals can get together and create a market without having any value assessed against an exchange membership. The fact that the New York Stock Exchange membership sells at $125,000 and the New York Curb Exchange memberships sell at $40,000 or $50,000 does not in any way destroy the value or increase the value of either of those exchanges. We have markets which function without an exchange and I believe function efficiently. I eliminated both income and expenses with respect to interest, exchange, and collections. The amount of income which I eliminated from this source was $49,952.65. I did not include anything in my working capital allowance for financing purchases and sales. Of the total cash which they actually had, I had in my computation of the working capital allowance allocated $166,100 as being the cash working capital allowance. The total amount of cash which all of the companies combined had at the beginning of the year 1931 was about $303,000 and for the end of the year the cash that they had on hand was about $211,000. The $166,100 which I have allowed as cash working allowance for the operation of the commission business as such is based on the cumulative operations of the entire year. Referring to the recapitulation of business getting and maintaining expenses in Exhibit 115, the first column is entitled "Advertising." That advertising covers newspaper ads, circular letters, postage, specialities and novelties, signs of various kinds and other miscellaneous items. [fol. 1249] Under newspapers and magazines the figure incorporated in this total of advertising expenses is $13,611.31. The total commission income as I calculated it for the year 1931 was $1,911,837.81. The expense of newspaper and periodical advertising would be about 7/10 of one per cent.

As a general proposition the expenses of a market agency, on a unit basis decreases with the increase in volume of business.

I do not know what proportion of a market agency's expenses are fixed as distinguished from variable. The expenses may not fall off in less proportion than the volume. There certainly is nothing uniform about it. From my study here at Kansas City, it is my impression that the

expenses have been decreased in the same ratio as the volume has decreased.

Unit costs which I have in my study would increase if the volume would decrease, and the cost in the aggregate would remain the same. The unit costs would decrease if the cost in the aggregate would remain the same and the volume would increase. There is then again a variation possible in the aggregate cost, if one went up and the volume remained the same, the unit cost would increase. If the aggregate cost went down and the volume remained the same, the unit cost would decrease. If efforts to increase business result in expenditures for business getting and maintenance and have the effect of increasing volume, some unit costs might be lower. The unit cost of business getting and maintaining would increase. The net result might be an increase [fol. 1250] in cost.

The market agencies apparently spent more money in 1931, to get business, and got less than they did in 1929.

The biggest decline in receipts since 1929 was in hogs. The decline in cattle was not nearly as great. Naturally it would affect different firms in different ways. Firm No. 4 handled 15,620 head of cattle and calves in 1929 and 21,331 head in 1931. Increases took place in cattle and calves for Firm No. 4, 6, 7, 14, 15, 20, 23, 25, 26, 30, 42, 48, 54, 55, 62, 65, 66, 70, 71, 78, 79, 83, 10 and 36. No firm showed an increase in hog volume. Firms Nos. 5, 7, 13, 15, 18, 44, 48, 54, 55, 73, 75, 76, 79 and 84, and 10 showed an increase in sheep receipts.

Impressions that I had gathered from hearing testimony are to the effect that markets compete with one another and individuals compete with one another in and among commission firms. It is my understanding that markets are competitive each with the other and that individuals operating on the same market compete with each other for business. To a reasonable extent it is necessary for a market agency to protect its patronage if it wants to retain it. We must always remember that the shipper has to pay for it, and he apparently is paying to have himself convinced as to what place he wants to ship it or to what individual he wants to ship it to.

I have a general recollection of the law of diminishing return. It is very patent that if costs increase for any

[fol. 1251] reason whatsoever and the income remains stable, the return to the individual is going to decrease.

As to a shipper, the volume that a commission firm would get would have no interest to me whatsoever. The question as to the service which they render me would be the most important in my mind. Comparing the business with that of brokers and others handling securities, I believe the matter of giving advice through circulars and statements is overdone.

Page 31 shows that for Firm No. 4, the per cent of business getting and maintaining expenses to income of all species is 32.9 per cent. The income per car for cattle and calves for that firm is $18.66 and the cost, as computed, is $17.85. The difference would be 81 cents net income per car.

Firm No. 6 had business getting and maintaining expense amounting to 18.5 per cent of gross income. The firm had an income of $19.01 per car and a unit cost of $20.39 per cattle and calves. The selling and buying per car, in case of Firm No. 4, is $4.34 and for Firm No. 6 it is $8.94.

Firm No. 4 had business getting and maintaining expenses in the amount of $7,032.00. Firm No. 6 had business getting and maintaining expenses in the amount of $2,-151.00.

I cannot state how much the volume increased as a result of the expenditure for business getting and maintaining in the case of any single firm or for all firms collectively. I believe that the effort and expense involved in going after [fol. 1252] business in the case of these collective agencies are justified only in the event that it may be proven that the result was to produce business which actually produced profits sufficient in aggregate amount to compensate for the expense of getting it. No expense is worth the making of it, if it does not produce at least its equivalent in income.

The income which would accrue to the firm, after all the other expenses, not including business getting and maintaining were taken care of, is what I have in mind. The increase in volume would possibly decrease the other unit costs. The cost of getting a customer can be determined at the time he ships his first consignment. It does not make any difference when he withdraws his patronage. The only way, however, in which the cost of getting that patron can be determined is by keeping a minute detail of everything

that is spent to get that customer to come to the business.

Even if the amount of a customer's consignments is known, the value of his patronage cannot be determined because he may produce gross income for the concern by encouraging other patrons. I have placed no value on the patronage lost to the Kansas City market as evidenced by the volume statistics relating to the year 1929 and the year 1931.

In the case of firm No. 6, nothing was included in business-getting and maintaining expenses for the operation of an automobile or for automobile depreciation. That was [fol. 1253] not found on the books, unless it was buried in travel expense by way of rental of automobiles. If R. H. Lewis and Colonel Flournoy, the operators of this business, have automobiles and utilize them in the business, their expense is not shown on the books and was not considered in the ascertainment either of total costs or business-getting and maintaining costs. There was no automobile shown for firm No. 4.

Where travel expenses related to the appraisal of livestock for marketing, belonging to attached customers, that was included among the business-getting and maintaining expenses. I included in business-getting and maintaining expenses all the expenditures for Exchange purposes, such as assessments for the transportation fund, the collection that is paid in by respondent agencies to refund any moneys that the Exchange has advanced in connection with this rate proceeding, and all other items of expenses, including membership.

The schedule on page 20 of Government Exhibit 115 represents the salary division as made on the questionnaire and takes in particularly that part of it which was allocated to country trips, circulars, and correspondence, etc. Those items include such correspondence which had to do with business getting, or correspondence which had to do with the actual selling of the animals. It included all time devoted to the market reports. The segregation is not made on the questionnaire between the time involved in appraisal trips as compared with the time involved in going out to solicit business. The whole of it is included here under the [fol. 1254] category of business-getting and maintenance expense. Of the $188,392.44 representing business getting and maintaining salaries, about $152,000 was allocated di-

rectly to the various species, about $125,000 went to cattle, about $17,000 or $18,000 went to hogs, and $13,000 went to sheep. The remainder was distributed to species on the basis of gross income less seconds. The amount of indirect expenses distributed on the basis of gross income was, as to salaries, approximately $32,000. Of the other expenses totaling $283,756.40, $57,475.67 was allocated directly to species. The remainder was allocated on the basis of gross commissions. Including both salaries and nonsalary expenses, 45% was directly allocated and 55% indirectly allocated. The distribution of salaries which was made directly shows a ratio of 80% to cattle, 12% to hogs and 8% to sheep. The indirect ratio of gross commissions less seconds shows 78% for cattle and calves, 16% to hogs, and 6% to sheep. In further subdividing and segregating business-getting and maintaining expenses in the differential study 115-A, I used gross income less seconds. The same method was used in distributing within the species as was used for the indirect expenses in distributing to species. That method of distributing indirect expenses would maintain the existing differential. The cost study would certainly aid in accomplishing the purpose of testing the equity of justice of rate differentiations. The distribution of this expense is made on the basis of gross income, as it was [fol. 1255] derived from the existing tariff and the same ratio as is established by the gross income, which is produced by the tariff is applied to the indirect expenses. Necessarily the expense follows the ratio of gross income. If all costs were distributed on the basis of gross income, and all net profits and all net losses were adjusted into the cost, the results would be equal income and equal cost on a unit basis. I believe that the method is correct in the light of other information which I have. What I had in mind was the fact that the individuals showed in their distribution on the questionnaire that the value of the services which they spent in the field were broken on the ratio of 80, 12 and 8. Based on the figures which I used as to the per-head value of the different species, the approximate relationship in value would be 78, 12 and 10. It would compare very favorably with both the direct ratio and the indirect ratio used in these cost studies. The ratio on the direct salaries was 80, 12, and 8. The ratio on the indirect ex-

penses was 78, 16, and 6. Those figures as to value refer to value of animals on farms as we obtained them from the Drovers Telegram. A test was made in Chicago on the market there, and the figures per head were very close to what the valuation on the farm was. That test was made in the early part of 1932.

Using the same value for head coming in each mode of arrival would apparently result in a ratio very much similar to the ratio now existing in gross income. I would use the same value for the same kind of an animal no matter [fol. 1256] what the method of arrival would be. There would be no ratio of difference as to value of animals, even considering a different number of the same kind of animals within a firm. The only thing that would destroy the ratio is the varying number of animals as between species.

In the distribution of indirect risk expense, we assigned for the year 1931 certain specified amounts to cattle and calves, to hogs, and to sheep as to each individual firm as representative of the shares of the total expense relatable to those species. That is the only place where we use such a method of distribution. The ratio having the value constant and having the volume within a year constant would not change. A distribution of all expenses could be made on the basis of ratio of animals of a particular class to the value of all animals of all classes, and the expense could be distributed to the mode of arrival accounts in the same way the value of the animal remaining constant for all modes of arrival. It would be distributed in the same way if I kept the same values. If I varied the values, it would not be distributed in the same way.

In making the assignment or distribution of indirect expenses, I used all the knowledge and information available to me which I thought was pertinent. It was a matter of judgment in determining whether it was pertinent. In connection with the recapitulation of risk expenses in Exhibit 115, the cases shown on page 27 are mostly items of adjust- [fol. 1257] ments for estrays. There may be in there items of adjustment on a refused purchase in a small amount.

No bond expense is shown for firms Nos. 1, 34, 37, and 88. I made no investigation to determine whether those firms had bonds on file.

I did not include any item for insurance having to do with liability for loss and damage to livestock. I followed the

Secretary's order in that respect. I included an allowance for public liability and insurance in view of paragraph 152 of the Secretary's order. However, the quotation, as follows, "An allowance of 10 cents per car should be sufficient to create a reserve out of which may be paid those losses which prudent management cannot prevent," is possibly subject to another interpretation. I included an allowance for it at 10¢ per car. I did not get any quotations as to its actual cost. I included insurance accruals covering employees' compensation, mortgage and theft, public liability, and furniture and fixtures. My attention has not been called to any other insurable risks. I have heard testimony along the line of risks which are not insurable. The reason no rates can be found is because they are noninsurable risks. Of the $47,000 risk expense, approximately $23,000 is allocated directly to species. $15,864.60 was distributed to cattle and calves, $2,851.78 to hogs, $4,121.98 to sheep. The remainder is distributed indirectly on the basis of head times value. The proportion of the $24,000 distributed in- [fol. 1258] directly was $18,679.37 to cattle and calves, $4,029.70 to hogs, and $1,454.24 to sheep. In distributing public liability insurance drive-ins were reduced to a per car basis, using the same number of head as Mr. Roberts used in his calculation. The information as to the income per head with respect to calves and cattle is contained on pages 53 and 54 of Government Exhibit 115. The amounts per head vary with each firm and with each mode of arrival. I did not calculate if for the market as a whole because averages mean nothing to me and I wanted to avoid an argument similar to the one which we had in the previous hearing. A normal is much more satisfactory in my opinion. As to what would be the normal income from calves, that will be a long-winded process to determine that. One firm has a per head income of 20¢, another firm has an average income between 28¢ and 29¢, 5 firms have an average income running between 29¢ and 30¢, 9 firms have an average between 30¢ and 31¢, 9 firms average between 30¢ and 31¢, 9 firms average between 31¢ and 32¢, 9 firms average from 32¢ to 33¢, 9 firms average from 33¢ to 34¢, 7 firms average from 34¢ to 35¢, 2 firms range from 35¢ to 36¢, one firm averages between 38¢ and 39¢, and one firm averages 39¢ and over. The normal falls between 30¢ and 33¢. Out of a total of 57

firms, 36 firms show a per head income running between 30¢ and 33¢, which indicates that normally that is where the charge is going to fall. I have not eliminated any firms in determining the normal. I gave them all consideration. [fol. 1259] The normal can be a range rather than a definite figure. It can be made a specific figure. It would require a considerable time to study the details of all of these firms to find out which specific figure in that bracket from 30¢ to 33¢ would be more closely to normal. In arriving at a normal for a firm judgment would not enter into the question at all in so far as income is concerned. An average means nothing. In connection with the normal income for calves, that covers a range of 4¢. The total commissions received for the species calves in 1931 was $90,681.24. The number of head of calves corresponding to that income was 284,759. That is an average income per head for the market of 31 8/10 cents. Referring to paragraph 116 of the Secretary's order of May 18, 1932, and succeeding paragraphs, I cannot identify the two firms whose expense for "Yarding Salaries and Expenses" was less than 50¢ per car on straight cars. The Secretary's order in Section 113 indicates to me that a recalculation was made by the Secretary from which this table was taken. I haven't the figures that were used in the tables in paragraphs 116, 117, 118, 119, 123, or 126. Similar tables can be made up and re-calculated on the basis stated by the Secretary in paragraph 113. As far as the results of making up those tables are concerned, I have to rely on the statement of the Secretary. I have made no computation of that kind. The method is stated here according to the methods of arrival on the basis of income derived. There was not necessarily a different cost study [fol. 1260] prepared. The cost study that we entered could have been used and the composite shown therein, adjusted to modes of arrival on the basis of income derived from the existing rates. In the Omaha case no cost study was made. The basic facts were put into the record and a calculation was made. I cannot see where it is a denial of any legal right which these individuals may have if they do not have an opportunity to cross-examine with reference to, and test the accuracy in this hearing, the cost study and the methods of cost distribution and segregation eventually to be employed. I do not interpret the Secretary's order to mean that he did not use this study which we made. As I interpret it, he took our cost study and made up a differential

distributing those composite valuation costs shown in there to mode of arrival on the basis of income derived. Of the $118,082.32 for administrative and general expenses, $3,300.31 was allocated direct to species and $114,782.01 indirectly to species on the basis of account sales and purchase, owners and drafts. It may be that I distributed administrative and general expenses in cost study 15 on the basis of gross income. That is the testimony on page 2,456 of the record of the former hearing. My statement on direct examination to the effect that I used the same basis for distribution of indirect expenses in this cost study as I used in the former cost study was incorrect to that extent. The amount of office and administrative salaries allocated directly is $41,202.72, of which $33,486.13 is applicable to [fol. 1261] cattle and calves, $3,555.76 to hogs, and $4,160.83 to sheep. The indirect expenses assigned amounted to $246,328.64. $171,415.83 was allocated to cattle and calves, $53,108.47 to hogs and $21,804.34 to sheep. The direct expense is distributed to the ratio of 81, 9 and 10. The indirect is distributed in the ratio of 68, 23 and 9. From this calculation it is evident that the segregation of indirect expenses finds no substantiation in the same manner in which I justified my distribution as to business getting and maintaining expenses. If the indirect expenses had been distributed on the basis of gross income the distribution would have been on the basis of 73% to cattle and calves, 17% to hogs, and 10% to sheep. The distribution on the basis of gross commission on indirect office and administrative salaries would have been $179,820 to cattle and calves, $41,876 to hogs, and $24,633 to sheep. There are combined in the cost study, Government Exhibit 115, the total amount of account sales and purchases 267,660, owners 274,515, and drafts 673,061. Under my method in the distribution of these expenses the influence of drafts was greater than the combined influence of owners and account sales. From the evidence I have heard in this hearing I have come to the conclusion that there is very little difference between cattle and calves as a composite item delivered by truck as distinguished from those delivered by rail. I have particular reference to Mr. Ecton's testimony. I have knowledge also of the animals which come on this market from observation [fol. 1262] in the yard on different occasions. Also I have made an examination of account sales in some instances.

From all that information I have come to the conclusion that there is little difference between the value of animals no matter what the mode of arrival. I reached the same conclusion as to calves delivered by rail and by truck and as to cattle delivered by rail and by truck. This same is true as between cattle and calves delivered in straight carload consignments and mixed consignments or in trucks. I have mentioned the sources and extent of the information which led me to reach these conclusions. In analyzing account sales we must make mathematical computations. It is more than a perfunctory eye examination. I have noted on examining account sales that no matter what the mode of arrival is, each class of cattle comes in all ways. I made no calculations on any market outside of the test which I made at St. Joseph on the relative value of animals. That test disclosed that no matter what the mode of arrival is, cattle, calves, hogs, and sheep, run about the same. I made no mathematical test as to the ratio within the species. However, I have observed that all classes of animals come in all modes of arrival. A test can be made within the species as well as for the species. I have not made any test within the species as to the varying values of head by mode of arrival.

The range for selling cattle in his firm, being No. 46, is from $5,800 to $1,980. The $5,800 man is an owner-sales- [fol. 1263] man, and the $1,980 man is a non-owner-salesman. For buying cattle the range is from $4,200 to $1,200, one buyer being an owner who gets $2,400, the other two buyers being non-owners, one of which gets $4,200 and the other $1,200.

For John Clay & Company, Firm No. 54, all individuals are non-owners. No. 1 sells cattle and is also manager and gets $12,000 a year. There are five other salesmen. The lowest of those who worked only for a part of the year was paid on the basis of approximately $200 a month. Another who worked for a part of the year was paid on the basis of $250 a month. Two individuals bought cattle and they received $5,760 for a year's work.

Wherever it was possible to segregate selling and buying they were shown separately. The individual in John Clay & Company who is cattle salesman and manager spent in selling time only 25 per cent of his total time and in buying only five per cent of his total time. Twenty-five per cent of

the $12,000 was allocated to selling cattle. Five per cent of the $12,000 was allocated to buying cattle. That same process followed through for all cattle salesmen and for all cattle buyers. The proportion of their time and the salary which they received which they allocated to selling and buying was so distributed. The $3,000 allocated to selling was distributed to all cattle combined with other salesmen on the basis of draft and head. The total amount of selling salaries for that firm was $17,250.50 which was dis- [fol. 1264] tributed as follows: to straight rail, single ownership, $9,864.96; straight rail, plural ownership, $2,-141.05; mixed rail, No. 1, $2,086.40; mixed rail, No. 1, plural ownership, $1,216.80; mixed rail, No. 2, single ownership, $147.97; mixed rail, No. 2, plural ownership, $69.88; and truck-ins, $1,165.14. About five per cent of the head sold by this firm represents truck-in heads. The seconds and splits are also included in that. About 6.8 per cent of the selling cost represented by salaries was allocated to truck-ins. All salesmen handling all the cattle and all salesmen's salaries were grouped into one amount. The net result would be that if a salesman did handle only one mode of arrival, a part of his salary was theoretically at least transferred to another mode of arrival, and the salesman handling that other mode of arrival alone was theoretically at least transferred to the particular mode of arrival which the first salesman sold. Under such a theory, $204 of the $12,000 man's pay was transferred to truck-ins. It would not be true that the species coming in as truck-ins would be surcharged, because that individual devotes his time exclusively to the larger rail consignments, for the reason that a similar shift is made from the individual selling truck-ins to the straight rail, which would offset at least in some measure, and possibly more than offset such a shift from rail to truck-ins. If all of the salesmen who get $3,600 or less are allocated to the drive-ins, then truck-in selling [fol. 1265] cost should be about $4,200 to $4,300, and there should be a shift of selling costs of rail consignments which would increase the truck-in costs to an amount greater than $55.08 per car. The reason for that $55.08 cost on truckins is very apparent. In the case of straight rail, single ownership, there are two cars per consignment per owner. In the case of truck-ins there — ten owners to an equivalent car. It is very apparent that the cost of handling truck-ins

is multiplied very greatly, because of the fact that each consignment contains a very small proportion of head compared to the straight rail, single ownership consignments.

If the salesmen receiving over $6,000 spent the most of their time on rail consignments and the lower-priced salesmen spent most of their time with truck-ins, one shift would not offset the other under my method of distribution. The effect of it would be to transfer from the rail selling to the truck-in selling to the extent of about $3,000. The rail cost would go down and the truck-in cost would go up. The time and money which the high-priced salesmen spend on the rail stuff totals $12,630. The time of the three low-priced salesmen which they all spent on truck-in cattle would amount in money to $4,162. The differential sheet shows that there is allocated to truck-in selling $1,165.14 in our study. Under the theory that the low-priced salesmen spent all their time on truck stuff, there should be $4,200 transferred from the expense of handling rail stuff to the expense of handling truck-in stuff, which would increase [fol. 1266] the truck-in costs about $20 per equivalent car.

If a shift is made from one mode of arrival to the other for no particular reason whatsoever, certainly it is wrong. That was not done in this case, however. The time of the $12,000 man was split 95 per cent to the commission business and five per cent to the loan business. Twenty-five per cent went to selling cattle and calves; five per cent to selling sheep; five per cent to buying cattle and calves; five per cent to yarding cattle and calves; 8 per cent to cattle and calves, country trips; and 8 per cent to cattle and calves for circulars, correspondence, etc. One per cent of his time went to hogs; one per cent to sheep; 30 per cent to cattle and calves for general supervision; two per cent to hogs for general supervision; and two per cent to sheep for general supervision. The five per cent of his time devoted to yarding was distributed on the basis of drafts. His salary was grouped with the yarding salaries and the whole was distributed on the basis of drafts. About 20 per cent of the total yarding salaries was allocated to truck-ins, and among those total yarding salaries was $600 out of this man's salary. The eight per cent of his time expended in country trips relating to cattle and calves was distributed on the basis of gross commissions, less seconds. About five per cent was allocated to truck-ins. The total head of

drive-ins was about five per cent of the total selling head.

The 30 per cent of this man's time represented by gen-
[fol. 1267] eral supervision of the cattle and calf business was grouped with all of the other administrative and general salaries and office salaries, and was distributed to the mode of arrival on the basis of account sales, owners, and drafts. On that basis about 27 per cent was applied to truck-ins. It does not follow that I applied 27 per cent of this cost element representing supervision to five per cent of the headage in the instance of this particular firm. Administration applies not only to head, but also to owners and to account sales. The fact is that there are 1,687 owners or about 33⅓ of all the owners ship their livestock by truck. Twenty-seven per cent of the office and administrative salaries was allocated to handling truck-in consignments, and in those truck-in consignments there were 5,775 head, 3,178 drafts, and 1,687 owners and account sales. The time of the employee Stark, who applied 100 per cent of his time to the office work for this firm, was distributed on the basis of account sales, owners, and drafts. His expense went into the office and administrative salaries, 27 per cent of which is allocated to truck-ins.

In all cases the total functional cost was determined by species and within the species they were distributed on the basis which I have heretofore stated. As to Firm 53, there is a cost of $103.11 as against an income of $51.60 on mixed plural ownership cars containing more than one species. That was arrived at by the same manner and method which [fol. 1268] I have previously described. It costs that company about $26 to handle every car it gets. The one car coming mixed rail No. 2, plural ownership, is unusual in this respect. It had 71 head, with 43 drafts, 16 owners, and 16 account sales. In Firm 25, the calculation shows a cost of $17.95 on mixed plural ownership cars, as against an income of $24.86. The reason for that is apparent because there was one car with 32 head, two drafts, and one owner. The ratio would not have been the same if the headage basis had been used for distribution where I used the gross income basis. I used the gross income method only in distributing soliciting salaries and business-getting-and-maintaining expense. It was in the distribution of functional expenses of soliciting and business-getting-and-maintaining that the seconds were eliminated and the distribution

made on the basis of the remaining gross income. On the cost per car of cattle and calves on page 16 there was first determined a ratio between the per car cost and the per car income. That ratio was then applied to all modes of arrival. The reason I did not apply that same ratio to the functional expenses was that it would maintain the differential as it exists today. Our purpose in making this differential was to test whether or not the existing differential was correct. A differential based on the distribution of expenses by way of gross income can be used as a guide in determining what a tariff should be, as well as a distribution such as we have made here, in the light of the [fol. 1269] other testimony which may be given as to the relative difficulty of handling the same number of head or cars coming in the various ways. Any differential study can be used as a guide. I did not relate the work which I did and the methods which I adopted to the record and testimony given in this hearing and in the former hearing.

In the comparison of salaries of salesmen and buyers in Exhibit 115, it was my intention to include the salaries of nonowner salesmen and buyers as they appear in the blue audits. In determining the volume handled on an annual basis in Exhibit 115, I could have segregated salesmen from buyers. There was no particular purpose for not segregating them, except that the salesmen and the buyers perform the same function in some cases. Their time was not divided between the selling and the buying functions in all cases in the questionnaires. "Cars per salesman" means cars per salesman and buyer. I took into consideration the proportion of the time of the particular individuals devoted to selling, buying, and yarding. I did not relate the time either to a 24-hour week or a 72-hour week. I do not understand that a salesman in distributing his time on the questionnaire took into consideration only the time for which the market was open. He may perform selling functions previous to the time that the market opens, and he may perform selling functions after that time. We took only such time as was allocated to the selling function, buying function, and yarding func- [fol. 1270] tion as shown on the questionnaire. The purpose of this was to see how the policy of the firms varied with respect to selling and yarding. We have found that some firms maintain a policy of having as few salesmen

as possible with as much yarding assistance as an individual needs. Other firms have the policy of having a lot of salesmen, and very few yardmen, making the salesmen do all the yarding function. Another purpose was to see how many cars per individual could be handled in selling time, buying time, and yarding time only.

In the case of Mr. Reed, who spent 25 per cent of his time in selling cattle and calves, he is the equivalent of one-quarter of a salesman for a full year on the basis of this schedule in my cost study. If we assume that the market had a 24-hour week operation as far as this salesman is concerned, he would not actually amount to three-fourths of a salesman on the basis of his questionnaire. He would amount to one-fourth of a salesman. We did not ask these salesmen to operate their selling function time into its possible component parts. We are establishing here a new base, 100 per cent for the full rate-making time and dividing that into sub-fractions. We asked these salesmen not for a division by sub-functions, but a division by functions. As I understand it, they gave us the proportion of the time which they spent on the selling function. The questionnaire speaks for itself with respect to what was included under each one of the functions.

In the case of John Clay & Company, Firm No. 54, the [fol. 1271] blue audit shows that there are six individuals whose title would be cattle salesmen and two cattle buyers. The same number is listed on the questionnaire. The statement in the schedule in Exhibit 115 shows the volume handled on an annual basis and that 4.67 would represent the proportion of the time of the individuals distributed to the selling and buying functions. To the function cattle selling or buying, nine individuals devoted at least a part of their time. On the blue audit of Firm No. 56, two individuals carry the title of selling cattle. No. 1 devoted 20 per cent of his time to selling and No. 2 devoted 35 per cent of his time to selling. No. 1 devoted 10 per cent of his time to buying and No. 2 devoted 15 per cent of his time to buying cattle. The office facilities expenses, amounting to $3,600, was paid to Cassidy-Southwestern. I am inclined to think that the yard employees of Cassidy-Southwestern did not help to any extent in the performance of the selling function, for the reason that the full 100 per cent of office facilities expenses is allocated to bookkeeping. There is one

full-time cattle yardman in this firm, with another part-time cattle yardman. If there had been trading or working back and forth as between the yard and office that situation would have been brought out in this questionnaire.

In connection with Firm No. 56, I show eight-tenths of a salesman and buyer as handling the total volume of the firm. That is the proportion of the time of these two in- [fol. 1272] dividuals which they spent in the selling function. In the blue audit of Firm No. 26, individual No. 7 is listed as a cattle salesman; individual No. 2 is a cattle salesman; and individual No. 9 is cattle buying. The questionnaire shows that individual 7 spent 20 per cent of his time selling cattle, individual No. 2 spent 45 per cent of his time selling cattle, and individual No. 9 spent 10 per cent buying cattle. Individual No. 7 spent two per cent of his time buying cattle, and individual No. 2 spent 5 per cent of his time buying cattle. My schedule shows .82 of a salesman or buyer handled total volume of cattle and calves. That is the proportion of their time when they spent in the selling and buying functions. Firm No. 83 had eight individuals listed as selling or buying cattle and calves. Individual No. 1 spent 40 per cent selling cattle and 5 per cent buying cattle. Individual No. 2 spent 53 per cent selling cattle and 5 per cent buying cattle. Individual No. 4 devoted 80 per cent to buying cattle, and individual No. 17, 90 per cent to buying cattle. Individual No. 7 spent 45 per cent of his time in selling cattle, and individual No. 20 spent 77 per cent of his time buying cattle. Individual No. 21 spent 77 per cent of his time buying cattle. Individual No. 22 spent 30 per cent in selling cattle and 40 per cent in buying cattle.

For Firm No. 84, the blue audit shows that five individuals are listed as cattle and calf salesmen or buyers. Individual No. 1 spent 50 per cent of his time in selling cattle and calves. Individual No. 2 spent 40 per cent in [fol. 1273] selling cattle and calves and eight per cent in buying. Individual No. 4 spent 45 per cent in selling cattle. Individual No. 6 spent 25 per cent of his time selling and five per cent in buying. Individual No. 7 spent 70 per cent in buying.

On page 84 of Government Exhibit 115, it is shown that Firm No. 83 had 4.41 salesmen and buyers, and Firm No. 84 had 2.43 salesmen and buyers.

I did not gather any statistics whatsoever bearing on the weight per car for any given species delivered to the market or any individual respondent. I did not get that information either for species or within the species. We ascertained that the charges had been paid as assessed, but I did not ascertain the relative burdens placed on the separate categories of animals moving under the different service costs. I did not assemble that information because in my opinion the percentage of commissions to the gross value has absolutely nothing to do with a reasonable charge based on reasonable costs. I believe that this record shows that in 1929 the commission on a ratio to the gross value of livestock was less than one per cent. Information has come to me that it will run between three and four per cent for 1931. The reason for the change is a drop in the price of livestock. I do not know whether there should be any variation on account of the relative ability of the traffic to pay as between the modes of arrival. All that I know about the ability to carry or stand the burden of the charges at [fol. 1274] the present time is what I have gathered to the effect that the farmer can spend just as little as possible. I passed not on the reasonableness of these costs, but made the cost studies on a unit basis, as we could best make them.

Redirect examination:

Comparing drafts and consignments as the unit for calculating the revenues, under Tariff No. 3, the draft unit would bring in the greater revenues.

I stated that the distribution of the indirect cost on the basis of head and draft would cause the cost per animal to decrease as the animals in the draft increase.

Previous to the St. Louis hearing, Mr. Burns and I went over the instructions and changed them slightly from what they were in Government Exhibit 14-A. I think we had them printed, but I do not have a copy of the revised instructions with me. On cross-examination, I described the most important changes that we made. I requested of the Exchange a statement showing all amounts paid into it by its members and the purposes for which paid. I received an estimate, but not anything which purported to be an accurate statement.

When I said that the Secretary has spoken as to insurance accruals, I had reference to paragraph 154 on page

86 of the Secretary's Order. From an accounting standpoint, the criterion as to the cost of mortgage and theft insurance would be what the firm actually paid rather than what the firm should have paid.

[fol. 1275] If multiplying the units by the rate gave you a higher figure than the amount actually paid that is not in any true sense an accrual unless the accrual will sooner or later resolve itself into an actuality. If it does not resolve itself into an actuality, it would be subject to the term of reserve, which would partake of the nature of a reserve for a liability, which is a true part of the earning of the company. An accountant would not determine an accrual for a risk as to which insurance is not obtainable. The only thing the accountant could do, under circumstances of that kind, is to get as much history of the particular kind of loss as he could, and having that history he might set up a reserve to cover such an accumulation of losses over the life of a firm. After that is done, if an insurance company, which had never insured any such risks, would state that it would charge so much for it, the accountant would stick to the facts and use the reserve method. I know of no form of insurance covering the liability of a person to himself for injuries he may do himself. In my opinion the so-called liability of a commission firm to the owners of that firm for injuries received by owners in the course of their work with the firm would fall in that category.

On the St. Louis and Chicago markets, the values of the Exchange memberships were determined on the basis of sales that had been made in the immediate past. They were $600.00 for St. Louis and $750.00 for Chicago. In St. Paul [fol. 1276] we had full access to the Exchange books and the value that we determined was $250.00.

There is a difference between the practicability of decreasing fixed expenses to take care of the decline, which represents a temporary fluctuation and the decline which represents a permanent response to general changed economic condition. For example, rent is a fixed expense. Let us assume that five years ago a firm handling 10,000 cars paid an annual office rent of $1,000.00. The fixed cost for rent was 10 cents per car. If today that firm handles only 1,000 cars the fixed cost would be $1.00 per car. In the light of past experience, that company should have taken some

steps to get smaller quarters and decrease its fixed rental cost. In the case of rent, it is a difficult thing to effect a decrease in that cost. If salaries are classified as a fixed expense and the company must maintain a certain fixed organization to handle the volume of a particular size, the same study must be made with respect to salaries.

I know there is a great deal of unemployment in the United States and that the depression exists pretty largely throughout the civilized world. If a company wants to survive, it cannot carry on a policy of maintaining a fixed organization under the decreased volume for any length of time.

If a company has a species of monopoly in the service it sells and it elects to pursue the policy of holding on to its personnel, after it has suffered a greatly decreased volume, and there is available a substitute service, it is my opinion [fol. 1277] that the substitute service would be sought. The volume at the Kansas City market was less in 1931 than it was in 1929. The amount of business getting and maintaining expense was greater in 1931 than in 1929. If the volume keeps on going and the fight for volume keeps on growing more and more intense the cost per car would get to such a place where it would consume any profit for any firm and result in losses in all firms. It might reach the situation where they were all after business, and there would be no more business to get. Somewhere in there a reasonable halt would have to be made in a regulated industry. Where there was no regulation, a situation of that kind could only go until some of the companies could not stand it any more and would have to go out of existence. The efforts of business getting and maintaining would not increase the total volume of livestock coming to market, if all the livestock produced in the country for the purpose of being marketed, is coming to market. If the supply coming to the market now satisfies the consumer demand, to spend more money to bring more livestock to the market would be money spent for nothing. Business getting and maintaining efforts, which represent competition as between the commission men on two different markets, diverts livestock to some extent from one market to the other. I do not think it would be a major part of the result. The only reason I can see why an individual should go to another market would be because he feels that on that other market he can realize a greater net return.

[fol. 1278] From my experience, I am led to believe that the competition, between agencies on the same market, is quite destructive.

I was introduced to an individual at St. Paul, who lived at St. Cloud, Minnesota. He had a car load of livestock to ship to the St. Paul market. Six solicitors appeared on the scene at the same time trying to get that car. In my opinion that is money expended to fit the fancy of a particular individual and is a waste. I have in mind the testimony of Mr. Hobbs as to the methods that are used in soliciting business on this market, and in my opinion that type of soliciting is destructive. The more that is spent to divert livestock, the greater is the expenditure, even on a per unit basis.

To the extent that business getting and maintaining efforts of market agencies at the Kansas City stockyards merely tends to divert the volume from one firm to another, those expenditures increase the cost of marketing. I testified, that in my opinion, there was no direct connection between large volume and large net profits.

I do not think methods and practices of the various markets vary to any material extent.

I have come across situations where firms of relatively low volume had a relatively higher profit per unit and have come across firms having relatively large volumes whose net profits were relatively small. I have found the same condition to exist among the market agencies at Kansas [fol. 1279] City. Those conditions are not peculiar to the livestock market agency business. In a firm having a small volume and a substantial net profit, the expenses are very closely controlled. The expenses are not very well controlled where a company with a large volume has a small net profit.

If, as to Firms Nos. 4 and 6, there has been substituted for the actual amount of salaries classified as selling and buying salaries only, the amount prescribed per car by the Secretary in his order to every car handled by these firms, the result would have been an adjustment by way of increase in expenses for Firm No. 4 of $443.00, resulting in a net gain of $555.00. The same computation applied to Firm 6 would have decreased the loss of $2,138.00 to $280.00. On the species hogs, the per car income for Firm No. 4 was $12.45 and the per car cost was $15.53. For Firm No.

6, the income per car on hogs was $19.78 and the cost per car was $30.85. For sheep the income per car on Firm No. 4 was $17.30. The cost per car was $28.63. For Firm No. 6 the income per car was $29.44 and the cost per car was $24.90.

Business getting and maintaining salaries for Firm No. 51 is $6.09 a car; for Firm No. 53 $8.14 a car, and for Firm No. 75 $4.58 per car for cattle. The business getting and maintaining expenses, other than salaries, are for these three firms $2.06, $3.74 and $2.08, respectively. For Firm No. 88 the salary allocated to business getting and maintaining is 28 cents per car, and the other expenses $8.58 per car.

[fol. 1280] It does not appeal to me, in view of a charge of approximately $18.00 to $20.00 a car commissions, that the percentage of money spent for business getting and maintaining is reasonable. I use the word "reasonable" not from a rate making viewpoint. I mean from the viewpoint of an accountant and an administrator of a business or an individual who would have the establishment of the policies of the operation of a business.

The expense of business getting and maintaining efforts cannot be allocated to new business nor (to) the maintaining of the existing business with any degree of exactitude. No one could point to the new business or the maintenance of the old and say that if moneys had not been spent for business-getting and maintaining things would be different. The volume of the livestock of the commission men generally was not as good in the year 1931 as it was in 1929.

Reports that are put out by various financial institutions, financial writers, companies and so on, almost invariably show a heavy percentage of decrease in the volume of business. I do not believe that a heavy expenditure of money for advertising and business getting is going to bring around an abrupt change. It is my opinion that people just haven't the money to buy with at the present time.

There is no magic in business getting and maintaining which solves all the economic woes. I have heard quite a number of comments on this market relative to the direct [fol. 1281] buying situation. Some shippers have the opinion that they are better served by disposing of their livestock by that method than through the employment of market agencies. For that reason they ship direct to save any cost that they can possibly save.

In my studies as represented by Government Exhibits 115 and 115A, I did not attempt to maintain the status quo with respect to the differentiation between the rates based on either species or mode of arrival within the species for the reason that I felt that the status quo as to differentiation was not correct. I was seeking to find, as best I could, correct differentials using cost accounting methods and restricting myself to cost only. There may be other factors in the picture to which we gave no consideration. I felt that the expense of business getting and maintain-g was made approximately in ratio to the way the business was coming in and that was the reason for using the gross income method of distribution of that particular expense. In doing that I was not actuated by any different purpose or principle from those purposes and principles used in respect to other bases of distribution.

Whereupon the witness was temporarily excused.

[fol. 1282] Mr. W. T. Angle, a witness called by the Government, after being sworn, testified in substance as follows:

Direct examination:

I am the same W. T. Angle who testified in the previous hearing in this case, my testimony extending from page 1666 to page 1942 and from page 3359 to page 3549. In so far as the policies and principles of the testimony that I gave at that time are concerned I think the same are true today. There may be some changes in the volume of livestock moving that would affect the decisions that I gave at that time. The volume of receipts at our market has now changed in some respects and the volume of business we handle in any species of livestock materially affects the cost in handling it. The lower our volume drops the more difficult it is for us to do business at a given cost. The material that I put in the record here previously would be true for the most part today. The volume of sheep, cattle and hogs going through our market place for the years of 1930, 1931 and 1332 were lighter than they were in 1929 and the years immediately previous thereto. Any changes in my testimony previously made would be hinged on that

change of volume rather than any principles that I previously expressed as applying to the commission business as we carry it on through the Producers Commission Association. I have reference to the changes in the volume going to the market and to our firm.

The difference between the audits of 1929 and 1931 would [fol. 1283] be the cost of handling that loan service which would tend to increase our general operating expenses in the year 1931 as compared to 1929. Other than the amendment which I have made in regard to servicing loans, my previous testimony would be applicable to conditions at the present time. During the year 1932 to date we have had the increased cost of taxes on our checks and increase of our first-class postage from 2 cents to 3 cents per letter. We have had the reduction on commission charges that were made on May 19, 1932. There were further reductions in our commission charges on June 23, 1932, and they were followed by another minor cut in charges on October 10, 1932. In making adjustments in the organization to meet these cuts in income we have had a general cut in salaries. We have reduced our advertising costs by eliminating certain forms of advertising. We made the salary adjustments in June that cut our cost about $500.00 per month. We also made salary adjustments during the first 60 days of 1932 which would amount to somewhere near $500.00 per month. That was a cut resulting in savings in cost. Some adjustments were made in 1931 by way of reductions practically in every case. We put in a salary cut in April 1931 of 10 per cent on all employees and that cut lasted for five months after which the salaries were put back where they were previously. During the year there were some minor permanent cuts in our salaries in 1931. Our budget starting July 1, 1932, calls for salary expenditures in round numbers of what it was in 1929. During the period of 1930 and 1931 our payroll went up several thousand dollars in order to take care of the large loan busi- [fol. 1284] ness. In view of the fact that we have now discontinued indorsing loans and we have placed on our credit corporation the responsibility of passing upon these loans and the cost of servicing outside of what we can do with our agency without creating any material cost against our agency, we are able to make these reductions. Our

employees are making their regular trips for soliciting purposes in the country and not to service the major portion of our livestock loans as we are handling them now with our credit corporation. Where a loan needs special attention and requires any considerable expense that cost is now accruing to our credit corporation.

Our total cost of handling our commission business commencing for the year July 1, 1932, and the following twelve months was based on about the same figures for 1929. I do not recall that there was any material deductions in the salaries for the year commencing July 1, 1932, as compared with 1929. We have been carrying recently 27 employees and I believe the records show in 1929 that we had 26 employees. During the period of 1929 to 1932 we made some changes in our sales personnel. In some cases higher priced salesmen were employed and lower priced salesmen were relieved which tends to offset some of the reductions in salaries that have been made. We have fewer employees now than in 1931. Our number of employees varies somewhat during a year to take care of the peak volume of business.

We have discontinued our road-side advertising costs [fol. 1285] which were amounting to about $176.00 per month. We have discontinued practically all farm publications, country newspaper and livestock daily paper advertising. The amount of money we are expending on that kind of advertising today is probably not over 15 per cent of what it was in 1929. This reduction in advertising and the dropping of our road-side sign expense were practically all done about January 1, 1932. These reductions do not show up fully in our statements until July 1, 1932, due to the contracts that had not expired. We made up another budget on July 1, 1932, in line with the anticipated income due to our commission rate adjustments. Our advertising budget at the present time is less than it was in any one of the years 1929, 1930 or 1931. It is not the idea that these advertising costs particularly are permanently eliminated but more adjustments were made in our costs to assure us that we could adjust ourselves to the new commission rate and thereby afterwards possibly replace some of our advertising at times and seasons when we think it can be done profitably.

We have had some increase- cost in telephone and telegraph this year as compared with the same period last

year. We had some increase in our bond cost. We are now paying the rate of $10 or $11 a thousand on our shippers' proceeds bonds whereas a year ago we had a rate of about $4.00 or $4.50 a thousand. I do not recall that there would be any material difference in the other items of expense between those now and a year ago. Our stationery, letters, letterheads and material for market guides and publicity [fol. 1286] is costing us less now than it did a year ago or two or three years ago. Our check tax was costing us about $4.00 a day more than a year ago. Recently we arranged to have our payments of livestock made in the form of a draft which is now making that additional tax cost on our checks probably not over $25 or $50 a month, if that much. Our telephone and telegraph bill is greater in 1932 than in the immediately previous years due to the fact that we have handled more business from a distance on the inbound side of our business. This spring we placed in Kansas and Oklahoma pastures about 40,000 cattle from the southwest. We had all the costs accruing in making these contracts and the telephone and telegraph costs, the personal time of one person trying to get the pasture contracts closed. Later on we had to divide them, half of these cattle going out on feed contracts and feed yards and going back to Texas. We realized a commission income of about half what looked like would be income.

We carry a $52,000 shippers' proceeds bond. Tariff No. 3 contained in Government Exhibit 101 is a tariff which we operated on commencing May 23 for a short period. That tariff was observed by our firm until the filing of a tariff which became effective on June 18, 1932, as contained in Government Exhibit 104. That tariff was in effect until October 10, 1932, at which time only minor changes were made. Government Exhibit 103-A appears to be a copy of the tariff we put into effect October 10, 1932.

In budgeting our expense for business-getting and maintaining we have given consideration to the approximate [fol. 1287] amount of money that we want to spend for market cards and other forms of printed contact with our trade and then we have given consideration to the amount of money that we expect to expend on travel, hotel, meals, automobiles, train costs and such as that. We have not endeavored to assess against business-getting and maintaining any definite part of these men's salaries in setting up our budget. We do not plan for the cost of business-

getting and maintaining to exceed $2.00 a car. In fact we are trying to hold it down around $1.50 on all species. I am speaking of those figures on the basis of the gross number of cars handled and the income straight across on all business and when I say that amount per car I mean on all our business with truck-ins reduced to a car basis.

Cross-examination:

My association is still operating under a cooperative organization and any net profits are subject to prorate refunds among our membership who are patrons of the agency. We charge no membership fee. We have certain affiliated associations, such as the Texas Marketing Association. Their relationship with the National Livestock Marketing Association as described heretofore in my testimony still subsists. It has 24 affiliated commission agencies. The National Feeder & Finance Corporation is a subsidiary of the National. We have credit corporations that they contact with our loan operations. The applicant in making his application for a loan to the credit corporation agrees in his contract to consign his livestock to our agency or some other agency on some market affiliated with the National Livestock Marketing Association. In view of [fol. 1288] the fact that the credit corporation gets all this spread in interest and we are primarily a market agency and not a loan agency we have come to an agreement whereby the expense and trouble in connection with these loans will be lifted from the shoulders of our agency for the future. We have asked them to take upon themselves the cost of making any of these loans they choose and the passing upon loans and the servicing of them to the extent of any special costs that are needed to handle them.

Mr. Dick Arnett is connected with them and Mr. John Burns is their manager. Mr. Arnett has been quite active with the Texas association in the placing of cattle and the movement of southwestern cattle. I would say that Mr. Arnett's activity has redounded to our benefit in the operation of our business only in so far that it gives an agency the satisfaction of having more volume. Mr. Arnett has had direct contact with most of these cattle that have come up to the Kansas pastures. He has been here on the market a portion of the time when they came into the market. We are not paying the Texas association or

Mr. Arnett anything. Mr. Arnett was active in this work in 1931. We did not give the Texas association or its membership any special consideration in the way of any agreement as to refunds of commissions or anything of that sort. The volume that accrues due to the connections mentioned and the profits thereof have been offset due to the fact that we had had to make some changes in our personnel which has resulted in increased cost to the [fol. 1289] agency and furthermore that we paid to our national association fees to the extent that practically as I evaluate the value of the business accruing to the connections mentioned to be of no particular benefit to the association. We still pay 50 cents a car assessment to our national organization. That fee is larger than that at the present time and it also covers purchases as well as sales. I believe it was increased about July 1, 1930. From the commencement to the end of the year 1931 our net asset account decreased from $17,172 to $13,809. The items that can be assessed as business getting and maintaining, or keeping of business expenses, are not shown as a separate item in our method of keeping our records. The costs shown on Exhibit C of the audit of the books of the Producers Commission Association for the year 1931 show market papers, newspaper ads, circular letters, postage, specialties and novelties, and signboards, all of which I would say were items of expense intended for the purpose of maintaining business which we had and getting additional business. I feel that the elimination of all those expenses, which would practically eliminate the contacts with our trade, would naturally result in a decline of the volume of business handled, and in addition to those items mentioned in my previous answer there is the contact of our salesmen and buyers on their trips to the country which on our records we do not set up as a definite cost of salary to those trips. We merely show the travel expense that is incident to their making those trips. Those trips cover appraisal trips not only on cattle coming to the market but on Exhibit C for the year 1931 it covers a [fol. 1290] large number of inspections made for our credit corporation to find out the condition of loans, all of which is charged to our commission business. Fifty per cent of the one item of travel alone as shown on this audit under the name of "Soliciting" represents the servicing

of loans and is not for the purpose of going out to solicit business for the house. We probably handled something over 50 per cent of the cattle serviced and the others for the most part went to other Producers agencies at other markets. Some of those cattle, however, went to private commission men.

We endeavor to run the business as efficiently as we know how to run it. The board of directors is composed of men familiar with the livestock business and have some knowledge of marketing livestock. We have seven men on our board of directors. The full board meets once each quarter. They consider affairs connected with operation of the agency and look over expense accounts and income accounts. They try to hold the expenses down.

I feel it is necessary to have the right class of men, not only to represent you in the selling and buying at the yards, but to make contacts in the country. I believe we had 8 cattle salesmen and buyers in 1931. No other agencies are discounting their paper through the credit corporations set up by our national association and its member agencies except those agencies which are members of the national association.

I have been inclined to feel that in the last four or five [fol. 1291] months it has been the largest direct movement in proportion to the total southwest we have ever had. There are quite a number of agencies in the corn belt which are sort of independent companies and individuals that have established range connections whereby on the range they ship their stock direct and they place it where they have an actual buyer on the range and operating what you may call a corn belt range commission business. I do not know just what charges are being assessed on an average on movements of that kind but in many cases the man that is selling livestock on the range is to my knowledge paying 50¢ per head for this service. In quite a few instances they are paying $1 per head. In some cases the man that is buying the livestock is also paying the person selling him the livestock a fee to the individual or agency that is selling the livestock. In most cases I think both the seller and buyer will pay a fee. In so far as I know the established charge for country selling of sheep has remained practically unchanged at 10¢ a head. There has been a reasonably large reduction in commission

charges on hogs. It is my opinion that there has been no material change in the volume due to the change in commission charges. There has been a tendency on the part of many stockmen to feel that direct shipments would yield them more money and there has been a general tendency of stockmen, like other people that have got to pay certain expenses or costs, to rebel against any and all costs they could eliminate. The idea that commission charges, yardage charges, and feed charges were exorbitant and too [fol. 1292] high has been talked over and discussed and argued among country men. They have figured that they would ship direct just for the idea that they would have more money. I cannot say that the results have been such that for them to talk in my presence that they have really benefitted themselves any. But they have given the impression that they wanted to pass up some expenses and see if they could eliminate some costs.

I believe an application of the tariff of May 23, 1932, was made just prior to putting it into effect. I applied it directly to account sales in order to ascertain what it would do. I believe we took the first full week of business in the first month each of the four quarters of the year 1931 to make that application. The result was a reduction on cattle and calves by rail of 10.6 per cent and by truck 5.8 per cent, hogs by truck and rail 15.53 per cent, and sheep 5.6 per cent. The only way we have ever discovered what a change in tariff structure or contents will do is to make an application of it to our business. The test would have to be directed either to the account sales that had previously been made on that particular species of livestock or from any abstract that we might have made off from those records. We filed the Secretary's tariff the last day we had to get in the mail before the order became effective. The so-called river markets in which Kansas City is included, are normally known as corn belt terminal markets. I feel that Kansas City of all these markets has more fluctuation [fol. 1293] of volume than the average market and also seasonally than any one of these corn belt markets. I might say that probably Fort Worth and Denver have the same up and down seasonal run that Kansas City gets due to the fact that they all draw off from the range country. It is my observation that Kansas City of all markets located immediately east and northeast probably gets a greater per-

centage of its weekly receipts on Monday, or Monday and Tuesday, than any other market in the corn belt. In order to accommodate those receipts it is necessary to have a personnel at the market sufficient to permit us to do so adequately and efficiently. I feel that it tends to enlarge costs to have this bunch of receipts on Mondays and Tuesday as well as to have them bunch seasonally. We oftentimes have to employ additional help on Monday and Tuesday and also seasonally, whereas the regular force that we might have, aside from what we have to put on to take care of those conditions, would no doubt take care of it easily without additional cost if we could have the same weekly receipts arrive either on four days, or five days. In reality we have a five day cattle and calf market, but Friday, the fifth day, does not figure considerably in the picture as a day when any volume is handled or when you can utilize the personnel of your organization to buy and sell livestock. Generally it is the latter days of the week, commencing with Thursday, that salesmen go to the country on country appraisal trips or have their service in connection with the agencies they serve. In speaking of hiring extra help I referred primarily to yard help. We hire extra [fol. 1294] salesmen but do not consider it practical and profitable to switch in a new salesman under those circumstances. In the past two or three years of declining markets and slow markets the trading period has run from 8 o'clock to at least 2 o'clock in the afternoon, especially during the first three days of the week. Costs have not declined on our agency. The value of the product which we handled was taken into consideration in making a reduction in charges. In all probability the average value of rail calves is higher than trucked-in calves in view of the fact that quite a large percentage of rail calves are stocker calves with quality and sell at a higher price than ordinary dairy calves that make up such a large percentage of the local truck-in run of calves. Previous to the last few years I think it would have been true of cattle, but the increasing number of carload feeders and persons feeding 6, 8, 10 or 15 head of cattle within a hundred miles of the market which are now coming by truck would tend to offset the higher value of rail carload cattle. Previous to five years ago rail cattle would carry an average higher per hundredweight value than truck-in shipments. It is true that if we

had an increase in the volume of business of a substantial character the tendency would be to reduce the unit cost of handling the livestock, and if a decrease occurred in volume it would have the tendency of increasing the cost per head, providing our cost of getting business did not change. I expressed the opinion that the rate on cattle at Kansas City in comparison with some of the other markets where I [fol. 1295] consider costs are lower was placing the market agencies on this market at a disadvantage in comparison with some of the other terminal markets. Carloadings on this market run all the way on cattle from 12,000 to 33,000 pounds and the headage all the way from 15 to 60 head per car.

There has not been any gain in our automobile account as I recall. An automobile in the commission business generally receives pretty severe use. On outstanding drafts above our bank balance in cash we pay 8% for those items until they are cleared. We carry no insurance respecting the risk of damage or injury to livestock while in our custody. Our agency had some items of that kind and they constituted an expense of operation to us. The loans of the subsidiaries of the National Marketing Association made on livestock amounting to $25,000,000 was, I think, for a period of time more than a year. And even though we do not sell all the livestock that we loan money on here at our own agency, it is generally sold by some agency affiliated with our national organization. I think it is true that an increase in volume will lower unit costs and decreases in volume will increase unit cost in the livestock commission business so long as an increased volume comes without increased cost of getting that volume and that so long as the decreased volume handled, the getting of that business is not reduced in proportion, and the other costs of service. If the extra profit that might accrue from increased volume is absorbed in business getting costs, there is no lowering of unit costs. I would say that the commis- [fol. 1296] sion business as conducted at Kansas City in so far as the acquisition of business is concerned is highly competitive. It is highly competitive in all its features, not only as between the agencies themselves but as between agencies on different markets and as between markets as a whole and the other channels through which livestock flow from seller to purchaser.

Redirect examination:

If one agency on the Kansas City market decides to spend considerably more money to get business, thereby increasing its unit costs, it may have the same result with respect to the other firms if they followed the lead and increased their costs in trying to get more business. I feel that in times such as we have had in the past few years, that it has taken more personal letters and more use of telephone and telegraph to keep in contact with our trade. They have been uneasy and desirous that we keep them posted of every little change or any possibility of getting out of their holdings, which has tended to put a little greater burden on the market agencies. When they call us up to inquire about the market, we sometimes pay for it and sometimes they pay for it. The cattle feeders naturally are more apprehensive of the market they are going to land on than the hog men. The hog man when he hears a radio report or reads a market report can fairly well ascertain what his hogs are going to bring, but when it comes to the fat cattle or slaughter cattle, they can sell anywhere from $2.50 up to $9.00 on steers at the present time. The owner of the [fol. 1297] cattle is at a loss to know whether his cattle are worth $6 or $7. He probably thinks they are worth $7 and they bring $6. In 1931 we received the regular commission charge on all business that came to our agency that carried the loan upon them. We received a certain amount of income from the inspection of these loans at the time they were set up and the cost of counting their livestock and appraising their value, inspecting the feed and possibly inspecting the abstract of chattels on file at the court house and things of that nature. We had certain costs which without a question of doubt were greater than what we received in the way of inspection charges therefor. The entire spread on the interest went to the credit association.

The tariff which we applied when we made our test was the identical tariff that we later filed. We agreed to make such tests as we felt would give us a fair idea of what effect it would have on our income. This was done in conjunction with other agencies trying to ascertain what the same tariff would do to their business. We actually figured every account sale that we made from May 23 to June 11 on the tariff that we had in effect during the stated period, and then also on the old tariff that we had been using previous

to May 23, and then we applied to all of our business during that period on the Packers and Stockyards rate that we put into effect on June 18. The results of that application were as follows: Cattle and calves by rail show a decrease on the tariff put into effect May 23 of 1.6 per cent, and the application of the Secretary's rate for the same [fol. 1298] period showed a 16.7 per cent decrease in cattle and calf commissions as compared to the tariff in effect previous to May 23. The decrease in cattle and calves by truck on the tariff we had in effect commencing May 23 was 6.1 per cent, and the decrease in the Packers and Stockyards tariff put into effect on June 18 was an increase of .7 of one per cent for that period. Hogs by rail show a decrease of 4.8 per cent when the tariff of May 23 was applied and the Packers and Stockyards tariff showed a decrease of 17%. Hogs by truck showed a 16% decrease when the tariff of May 23 was applied and the Packers and Stockyards tariff showed a decrease of 14.4 per cent. Sheep by rail showed 14.5 per cent decrease when the tariff of May 23 was applied and the Packers and Stockyards tariff showed a decrease of 18.7 per cent. Sheep by truck showed a decrease of 8.1 per cent when the tariff of May 23 was applied and the Packers and Stock yards tariff showed a decrease of 19%. The tendency to put the bulk of cattle receipts on our markets on the first three days of the week is as great today, or greater, than ever and in the case of hogs and sheep I doubt if there is any material difference in that respect over a period of time. I feel that the truck has probably had the effect in the immediate local territory of bunching receipts on certain days, especially on hogs, that we did not experience before the coming of the truck. It looks like the hog shipper in this territory gets from the radio or some source an idea that the hog market is up and they will roll 7,000 hogs by truck maybe on a Thursday or [fol. 1299] Friday just as well as on a Monday or Tuesday. In stating that the maximum rate provided in the order of the Secretary placed this market at a disadvantage with other markets, I had reference to St. Joseph, Sioux City, Omaha and St. Paul. The fact that we have to go to the unloading docks and get our hogs and cattle is a factor of very definite cost. The fact that we have to go to the cattle truck unloading gates and the hog unloading gates, which are from a quarter to a half mile from our pens, to get our livestock is a factor of definite cost which I do not

believe is comparable to any single market agency on any market I have just mentioned. I believe our business originates at Kansas City on an average at points greater than do other markets mentioned a few moments ago, and that makes our telephone and telegraph and personal visits more expensive. Our market covers a larger area in way of length than any of the other markets mentioned, which makes it more important to have horses in the cattle yards to traverse the area, contact the buyers, and to make the best sales possible on the market. There might be some conditions at these other markets that might make certain items of expense higher than at Kansas City. We have some little losses that accumulate in our handling of livestock in the yards. If an animal gets crippled in the sorting of livestock and our cattle yards report that someone threw a gate or that the animal got caught in a way that crippled him, or if we lose a calf going to the scales in a jackpot, or someone knocks a calf in the head, there is no [fol. 1300] one to pay for the calf except our association. We try to pay for such losses that may occur in our hands and as we feel might be due to any negligence on our part. We do not pay at all for natural losses in the yard that we feel would have happened under any one's hands. They represent a very small amount in any one year.

Cross-examination:

The item of $1,511.96 in our audit for 1931 is the cost incurred in our loan department. The item of $2,356.34 represents the amount received on inspection fees. The amount of expense of $1,307 does not represent the cost to the association of getting the inspection fee mentioned. We are giving free subscriptions to the Drovers Telegram only to a very small extent.

The figures with respect to the application of the tariff in the Secretary's order to the first full week of business in the first month of the four quarters of 1931 show reductions as follows: cattle by rail 18.6; cattle by truck 2.8; hogs by truck and rail 14.81; sheep by truck 16.52. Those figures were taken off our records, but the extra service charges were not taken into consideration. If the extra services charges had been added they would have been more under the Secretary's order than under the tariff of May 23. The test for the period from May 23 to June 11 covered a period

when our total business is relatively light. It would not be representative.

We are still maintaining our radio service, and the board of directors considered the matter and thought it advisable [fol. 1301] to maintain that service. We accept shipments from everyone who may consign them to us, whether member or nonmember.

Recross-examination:

I considered the first full week in the first month of each quarter as a representative test period, and that would fairly represent the application of the rate. We voluntarily filed the tariff effective October 10, 1932. We are trying to get along on this tariff, and we have no particular objection to it. It is substantially the Secretary's tariff. Considering the present conditions of the livestock men of the country and all factors concerned, we are not opposed to going along on that rate until we find out that we don't think we can operate efficiently and satisfactorily. We are desirious of giving consideration to the country's ills and trying to get along on a schedule that will give consideration to the problems that our customers are confronted with. The rate we filed on October 10 made only a few minor changes in the Secretary's rate in order that the Producers Commission Association's tariff would not be at variance with the other market agencies on the Kansas City market in charging higher commissions in minor respects. We have no objection to the tariff which we are operating on at the present time, and we are satisfied for the time being with the income derived from it. We are not at the present time or in the immediate future planning to file a new schedule or raising it. We amended the Secretary's charges so that our charges would be in line with other agencies on the yard with respect to yard sales or [fol. 1302] seconds, feeling that there was little reason why our association should be charging the dealers on the Kansas City market one rate and the exchange firms another rate. We are willing to go along on such a rate as we have here for the time being until we feel conditions may change whereby there might be justification for either lowering them further or raising them from present levels.

We have never paid less than eight per cent for any of our overdrafts at the bank.

Mr. John J. Bachmann, a witness called by the Government, having previously been sworn, returned to the stand and testified in substance as follows:

Redirect examination:

In describing a method of arriving at a normal, my answer was confined to my own views in the matter and it must be understood that my normal was just a range within which the normal would fall. I was finding a normal composite income per unit for the market as a whole. A normal for a firm can be determined as well as it can be determined for all firms.

In cost accounting for businesses generally, unit costs are determined through the use of such methods of averaging. If there were two firms, one of which received five thousand cars of cattle, and the other five hundred cars of cattle, there would be no relationship between those two firms, and the average arrived at would not relate itself in any sense to the actual unit costs of either of those [fol. 1303] firms.

To determine a normal of costs for a function within a firm is very difficult if not impossible. A normal income by mode of arrival could be determined for the firm, and a normal of those normals for the market would possibly be more exact than a normal of averages for a firm. I did not intend to apply that to costs. I have reached the conclusion that the cost factor is more important than the value factor in making up a tariff.

Recross-examination:

Mr. Angle stated that the Secretary's tariff would produce under their test approximately a 16 per cent cut. That 16 per cent cut is subject to a differential of 9.7 per cent on the basic tariff which would bring the 16 per cent cut down to some extent. I have never applied Tariff No. 3 to the business of a single market agency. I personally made an investigation of the tests made by about 35 firms on which test sheets there was shown the basic information shown on the account sales. That test showed approximately an 11 per cent cut. On going through that test I noticed a nickel difference showed up on cattle, and that nickel difference would make a considerable difference in the per centage of cut.

I did not attend the conference between Mr. Burns, Mr. Elton Marshall, solicitor for the Department of Agriculture, and counsel for respondents in your office some time between July 15 and September. I spoke to Mr. Marshall [fol. 1304] about the conference when I saw him in Washington. He said that counsel for respondents felt that my test was wrong and he asked me whether I felt that I was right in the matter. I told him that I felt that we were conservative in our estimates of what the new tariff would do, meaning that we did not take the viewpoint in making that test that the greater number of animals should go into the higher brackets, but that we leaned rather to the other side that the greater proportion of the animals should go into the lower brackets. I do not know just how much more consideration the cost factor should be given than the value factor in the ascertainment of rate differentials. Taking all head, no matter what the mode of arrival is, and multiplying them by $40 for cattle and calves, $10 for hogs, and $6 for sheep, a ratio is determined which breaks about at 80 per cent for cattle and calves, 10 per cent for hogs, and 10 per cent for sheep. The discussion which we had was more in the nature of an argument and academic, and not specifically for the purpose of determining what a proper basis of distribution of various functional expenses would be.

(Objection sustained to the following question: "Did you assist anyone who was engaged in the preparation of the order between the date of the former hearing and May 18, 1932, or have anything to do with any matters that concerned this Kansas City proceeding?")

"Mr. Gage: The respondents offer to show by this wit- [fol. 1305] ness as a proper part of cross-examination that he did assist in the preparation of the order and in the accounting service falling within the range of the duties to which he has testified were assigned to him within the Department, not only for the purpose of testing the validity, fairness, and accuracy of statements previously made by him, both on direct, cross and re-direct examinations, but for the purpose of showing that neither the Secretary of Agriculture nor in his absence the Assistant Secretary of Agriculture had anything to do with the preparation of this order or the actual determination of issues involved

in the order of inquiry in this proceeding. That offer of proof is here made severally upon behalf of each of the respondents involved, and we ask a ruling as to whether or not the offer shall be granted or denied."

"The Examiner: Offer of proof denied."

As shown on Government Exhibit 15, page 44, the expenses for business getting and maintaining, which does not include salaries, amount to $295,146.56. I believe that the number of firms is 64. As shown on page 24 of Government Exhibit 115, the amount of business-getting-and-maintaining expenses, not including salaries, is $283,756.40. I believe that the number of firms is 60. Expenses other than salaries, in the study of 1929, Government Exhibit 15, the exchange soliciting and membership dues were not included. That is the one difference. There is included in the exchange soliciting and membership dues all of the [fol. 1306] moneys that we could find from the books of the companies that they paid to the exchange covering radio, the time of various individuals spent in getting information to be broadcast on the radio, rate hearing, and so forth, as is described heretofore in my testimony. I do not know whether it includes all expenses incident to the general upkeep of the exchange. I did not have an opportunity to examine the books of the exchange.

I do not know that there is a separate assessment of five cents a car covering the radio activities. The only memorandum I have here is that there is a five-cent charge on out cars and eight cents on in cars for the rate hearing. In Government Exhibit 115, those expenses were included under business-getting-and-maintaining. In the study made at the previous hearing Government Exhibit 15, the exchange assessments and dues were included under administrative and general expenses.

In making up my cost study, I threw all travel expense into business-getting and maintaining. In getting out our questionnaire as to the division of time, I included under business getting all country trips of any kind or character in the statement of appraisal and soliciting work in the country. I made a segregation of the time of the various individuals engaged in work on the market and included all appraisal time in Exhibit 115 as spent in business-getting and maintaining.

The figures in 1929 were about 22 per cent as compared with the comparable figures of 25 per cent in 1931. It is accidental if the same percentage of expense is assigned [fol. 1307] directly as compared with that assigned indirectly under these methods of distribution which I have employed. There may be a substantial variance between the various respondents in that respect.

In response to a question on redirect examination I eliminated entirely the selling and buying shown in Government Exhibit 115 and substituted for the amount shown on the cost study an amount calculated by multiplying the number of cars of cattle by the allowance of $5.00; for hogs $2.50; and for sheep $4.50. That made the difference in the net profit that I stated. For Firm No. 4, the amount of selling cost would have been $443. greater than is shown in our cost study.

The total amount of selling and buying salaries, after the recalculation, was for Firm No. 4 $5,866.00 and for Firm No. 6, $2,750.00. Firm No. 4 actually expended $5,423.00 allocated by my cost study applicable to selling and buying salaries. The total salaries of those, whose principal function was selling and buying hogs and cattle, was $7,601.65 as indicated by the blue audits. On Firm No. 6, owners' salaries, set up in the blue audits, amounted to $6,900.00 but for non-owners $2,685.50. The two owners of the firm, under the recalculations, would have received $6,900.00 less the adjusted loss, which would make it $6,620.00. That does not take into consideration the decrease in the selling cost of $1,858.00, which would further decrease the allowance if it were allocated to owners and bring the amount down to $4,762.00.

As to Firms 67 and 54, one is at the extreme low for [fol. 1308] handling cattle and calves and the other is at the extreme high.

Business getting and maintaining expenses were $1.92 per car as to salaries and $2.64 as to non-salary expenses, making a total of $4.56 per car. The only expenses classified under selling and buying were salary expenses which average for the market $5.00 per car. The total of all market costs in respect to cattle and calves was $12.63 for salaries and $5.48 per car for non-salaries, making a total of $18.11 per car. That is an average of an aggregate.

The expenses are aggregated and the cars are aggregated. This $18.11 is the result of dividing that aggregate volume into the aggregate cost.

In the exhibit I do not show the average per head or per car income by modes of delivery in respect to any species for the market as a whole.

Redirect examination:

Referring to the question and my answer on page 1711 of the transcript I certainly did throw all travel expense, regardless of whether that showed cost of soliciting or appraisal work, into business getting and maintaining, but I also followed the blue audits.

Whereupon the witness was excused.

Whereupon Government Exhibit No. 100 was received in evidence over objection by respondent's counsel.

Whereupon Government Exhibit No. 115 was received in evidence over objection of respondent's counsel.

[fol. 1309] Whereupon Government Exhibit 115-A was received in evidence over objection of respondent's counsel.

Whereupon Government Exhibit No. 115-B was received in evidence.

Whereupon Respondent's Exhibit No. 200 was received in evidence.

Government Exhibit No. 100-A

The Government offers in evidence Government Exhibit No. 100-A, the same being a copy of the order of the Secretary of Agriculture of May 18, 1932, and the same was received in evidence over the objection of respondent's counsel.

Dr. Howard D. Dozier, a witness called by the Government, after being sworn, testified in substance as follows:

Direct examination:

I am the same Dr. Dozier who testified in the previous hearing and am still an economist employed in the Bureau of Animal Industry, Department of Agriculture. I have remained in that employment continuously since my last testimony in this proceeding and have continued the same line of studies and investigations since the last hearing. My

official duties in my profession as an economist have caused me to keep informed as to general economic changes in business in the United States at large.

Government Exhibit No. 122

(Whereupon the Government asked to have marked for identification three sheets of photostat copied matter as [fol. 1310] Government Exhibit No. 122).

Government Exhibit 22 which was introduced at the last hearing was the result of a statistical study showing by counties the receipts at Kansas City of the various species of livestock received from those counties. That is summarized also by States and is shown by counties and by States in Government Exhibit No. 22. The information contained in that exhibit relates to rail receipts of the various species at Kansas City for the calendar year 1927.

Government Exhibit No. 122 is a study by States of the livestock population for the years 1920 to 1932, inclusive, and the receipts from those States at Kansas City and four other markets. This exhibit shows information with respect to the states of Kansas, Texas, Oklahoma, Missouri, Nebraska, Colorado and New Mexico. These States furnished the major portion of the livestock received at Kansas City and may be thought of as including the Kansas City trade territory. The cattle and calf population, the hog population and the sheep population of each of these States as of January 1 each year is shown. The number of each species marketed from each State at each of these markets is given. There is also shown the total number of head marketed at these five markets and a percentage relationship of this total is set up for each of the markets and for the 7 states as a whole. The information contained in this exhibit relates to that livestock which arrived at these markets and passed through the stockyards. It does not relate [fol. 1311] to the so-called receipts from direct buying. The figures given in this exhibit do include such animals as passed through the respective stockyards direct to packers. Animals commonly known as "throughs" are included if they were counted into the stockyard receipts. I have summarized the percentages of the total receipts at all of these markets received by each for the years 1920 to 1931, inclusive. This summary relates to cattle and calves, considered as one species, hogs and sheep. The summary is as follows:

[fol. 1312]

Purchase at Five Markets from Seven States (1)
Cattle and Calves in Per Cent of Number Marketed

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931
Kansas City	49.5	49.9	50.4	51.2	48.4	49.1	44.7	46.6	44.9	44.4	44.0	40.7
Chicago	3.0	4.3	3.7	3.9	5.	4.5	5.2	4.8	5.7	5.7	4.9	6.7
National Stock Yards	14.5	14.8	13.9	14.3	14.3	14.5	16.5	18.6	15.5	15.8	16.3	16.8
Omaha	21.4	20.6	21.4	19.9	21.3	20.3	22.6	19.8	22.3	22.6	23.9	25.7
St. Joseph	11.6	10.4	10.6	10.7	11.	11.6	11.	10.2	11.6	11.5	10.9	10.1
All Five Markets	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.

Note (1) Texas, Kansas, Oklahoma, Missouri, Nebraska, Colorado, New Mexico.

Purchase at Five Markets from Five States (2)
Hogs in Per Cent of Number Marketed

Kansas City	32.1	28.6	28.8	30.3	26.3	24.6	27.6	26.4	28.1	27.8	24.9	19.4
Chicago	0.8	1.0	1.6	1.2	0.9	0.9	0.7	1.8	1.1	1.1	0.8	0.8
National Stock Yards	18.9	22.3	23.0	24.0	24.0	24.1	25.8	32.5	24.8	26.3	25.6	23.1
Omaha	27.4	27.9	26.3	26.0	29.9	32.2	28.2	25.1	27.6	28.0	32.1	39.0
St. Joseph	20.8	20.2	20.3	18.5	18.9	18.2	17.7	14.2	18.4	16.8	16.6	17.7
All Five Markets	100.	100.	100.	100.	100.	100.	100	100.	100.	100.	100.	100.

Note (2) Kansas, Oklahoma, Missouri, Nebraska, Arkansas.

[fol. 1313]

Purchase at Five Markets from Eight States (3)
Sheep in Per Cent of Number Marketed

	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931
Kansas City	47.9	42.3	43.6	38.7	41.5	40.0	43.2	43.0	42.6	42.7	42.8	45.8
Chicago	14.7	22.1	20.7	21.8	17.6	15.3	14.3	16.6	10.2	8.2	11.2	11.8
National Stock Yards	12.3	12.2	13.4	10.3	9.6	10.4	11.2	11.1	8.2	9.2	8.7	10.1
Omaha	7.6	7.1	6.7	11.1	9.2	11.2	9.6	8.1	10.8	11.0	12.6	9.6
St. Joseph	17.5	16.3	15.6	18.1	22.1	23.1	21.7	21.2	28.2	28.9	24.7	22.7
All Five Markets	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.	100.

Note (3) Kansas, Texas, Oklahoma, Missouri, Colorado, New Mexico, Arizona, Utah.

[fol. 1314] Proposed Government Exhibit No. 122 was compiled under my direction. To the best of my knowledge and belief it is accurate. I might add that I planned it myself and the calculations were made for me. These figures were taken from certain Government publications, particularly "Crops and Markets", the Agricultural Yearbook, and some of them were taken from reports submitted to the Department. The Agricultural Yearbook is the yearbook of the Department of Agriculture. "Crops and Markets" is a publication of the Department of Agriculture. The reports are submitted monthly to the Bureau of Agricultural Economics by people who operate at the stockyards, I think by the stockyard companies. I can state the purchases of cattle, hogs and sheep by packers operating in the so-called Kansas City trade territory in the year 1931. I obtained this information from reports of packers to the Packers and Stockyards Division of the Bureau of Animal Industry in the Department of Agriculture. For the most part I have included packers who are located away from what are generally known as a central market. However, there are included in these figures the receipts at Kansas City by the so-called Mistletoe Yards, Armour, Cudahy and Wilson. They do not include the purchases of Armour, Cudahy and Wilson on the Kansas City public stockyards. These figures do not contain any purchases on the Kansas City public stockyards by any packer located at Kansas City. These packers from whose reports these figures were obtained operate their plants in that portion of the Kansas City trade territory designated as 50 to 100% [fol. 1315] area in Government Exhibit No. 22. The purpose in obtaining these figures was to show what proportion of the purchases of these packers they make on the stockyards and what portion they make in the country or away from the so-called central markets. There are 31 packers involved who purchase livestock in portions of those states named in Government Exhibit No. 122. These statistics are calculated on an annual basis. I do not have comparable figures for other years.

The Independent Packing Company in St. Louis is not one of the packers included. When I speak of the Kansas City trade territory I mean those counties which, acocrding to my study for 1927, sent to Kansas City public stockyards from 50 to 100% of all livestock marketed by rail at the 10

important markets. I included in the list of packers from whose activities these figures were taken every packer reporting to the Packers and Stockyards Division who has a plant located in that territory. I included in these figures all the purchases made by these packers regardless of whether they are made in that 50 to 100% territory or outside of that territory, except that I did not include any purchases made on the Kansas City public stockyards by any packer whose plant is located at Kansas City. I have included all purchases of all plants located away from Kansas City regardless of where these purchases were made.

With respect to those packers located at Kansas City, I have included only those purchases made in the country. To complete the figures showing purchases at public stock- [fol. 1316] yards and make them comparable with the figures showing purchases direct from the country, it would be necessary to include in the purchases at public stockyards the purchases by Kansas City packers at the Kansas City stockyards. In other words to make them comparable the purchases of Mistletoe, Armour, Cudahy and Wilson on the Kansas City stockyards should be included.

It is my opinion that it would be fair and reasonable for the Secretary to allow as compensation for the use of the capital invested in the fixed assets as appraised and whatever portion of the memberships it may be decided to include with the capital, a return of 6 per cent and on such working capital as may be determined to be fair and reasonable, I think, 8 per cent or perhaps below would be reasonable. I am assuming that the ordinary risks incident to the business will be allowed for in a separate item and that the return to which I am testifying will be for the use of the money employed, including only such risk in there as is incident to the financial aspects of making loans.

I think the general economic conditions have had an influence on the decreased volume of livestock coming to Kansas City to be handled by these market agencies in the years 1931 and 1932. My personal opinion is that it will be a rather slow recovery. I should expect a somewhat slow recovery of receipts of livestock at the Kansas City market.

Cross-examination:

I am connected with the Department of Agriculture in the same capacity that I was when I testified in the former hearing.

[fol. 1317] I have had nothing to do with the issuing of the order of inquiry for the proceedings in this case or anything to do in connection with the hearing outside of what I have explained.

From the average price per hundredweight of hogs at Chicago for every year from 1880 to 1931, inclusive, the determination of an average is a matter of mathematical calculation. The normal is not, and I cannot answer the question as to what I would consider to be a normal price. There are any number of different kinds of averages. As I use the term "normal" it does not connote something that is mathematical.

If I, as a commission man, were to start out to borrow enough money to establish myself as a commission merchant on the Kansas City market, I don't think I could borrow the money. I think there are perhaps some people on the Kansas City market who, if they had everything wiped out today except their experience, might raise enough money to re-enter business. I doubt if there are very many of that type. Such a loan would represent a character loan.

As to the function of these livestock exchange memberships in connection with the financial conduct of the business of the member agencies who are respondents, that represents a sort of a contribution into the treasury of an association which is held there as sort of assurance of good behavior on the part of the commission man and financial responsibility on his part. I do not think that I can say [fol. 1318] that the entire value of the memberships should be included among the assets. I have read most of the transcript of testimony in this record, and have not seen anything that would justify the conclusion that any of the respondents invested money in these memberships except in good faith.

I have heard of the law of decreasing costs. Within limits, I think that law applies to the commission business. I think it has a little different application there than it does in some other businesses. I would not necessarily expect to see unit costs decline with increased volume in the operation of a market agency. In this business I have seen it illustrated where a firm has a certain amount of business and with that business it has a certain unit cost and it decides to expand and goes out and expends so much to get additional business that it raises the average cost above

what it was before they got the new business. That is unusual, however. It can occur that a firm on a certain volume is utilizing all of its capacity, personnel and equipment, and it obtains a slight increase in volume, making necessary the employment of additional personnel and additional expense which is not so fully utilized, and, therefore, that increased volume sustains an increased unit cost. I think the commission business can be made generally to follow the ordinary economic principles of decreased cost with increased volume.

Redirect examination:

When I stated on cross examination that I did not think that any market agency could borrow all of its capital re- [fol. 1319] quirements, having no capital of its own, I did not have the activities known as "clearing" in mind. I gave it as my opinion that there were some people on the market who could on their own personal credit and reputation borrow money to start in the commission business. I do not know of any practical method whereby the amount of cash working capital necessary to the businesses of the respondent market agencies can be ascertained. Having in mind the variation for the need of working capital at different seasons of the year I would determine as nearly as I could the amount of borrowed liquid capital and apply the annual rate against it for the time the capital was used.

Recross-examination:

Supply does not guarantee the flow of livestock through any given market. I cannot account for the fact that Kansas sent some 27,000 more head of cattle and calves to Chicago in 1931 than in 1930, except that Chicago is generally looked upon during periods of declining prices as the market of last resort. I do not know why the receipts declined at Kansas City with respect to Kansas cattle between the two years. I doubt whether the altitude of the rates deflected many cattle from one market to another.

Whereupon the witness was excused.

[fol. 1320] Mr. W. G. Land, a witness called by the Government, after being sworn, testified in substance as follows:

Direct examination:

I am engaged in the livestock commission business at the Kansas City stockyards under the name of the Walter G. Land Livestock Commission Company. We formed a partnership this year. Prior to that time it was an individual business and I owned the entire business. I clear the transactions of another livestock commission firm. I clear Link Faskin. My firm keeps his books, writes his letters, and clears his cattle, sheep and hogs. We sell his hogs, but he has a very small number of them. We don't sell his sheep, but we have a sheep man that sells for a great many firms, and he sells for Mr. Faskin, the same as he does for me. He sells his own cattle. We do all his office work, keeping the books, writing his letters, and sending out his circulars. We pay for any livestock that he purchases for his customers. We make the remittance for livestock that Mr. Faskin sells, and we advance him money for those purposes. We get our money back when the livestock is paid for by the people to whom Mr. Faskin sells or when a customer for whom he buys pays for the livestock. We charge Mr. Faskin one-third of his commissions. I do not know that there is any regularly established price in the stockyards for clearing service. The amount charged would depend on how much business a man does and how good his credit *it*. It would depend on the amount of business he had if I were making the deal. I do not think that the clearing charge [fol. 1321] would be smaller where the volume of business is large. We would have to employ additional help to handle it. We have to keep a separate set of books, and it would become more complicated the bigger amount of volume there was. This charge of one-third of the commission covers everything we do for Mr. Faskin. The circulars we issue for Mr. Faskin are just circulars relating to his business. We do not combine our business and his business in any way.

Whereupon the witness was temporarily excused.

Mr. Glenn T. Stebbins, a witness called by the Government, having been previously sworn, returned to the stand and testified in substance as follows:

Direct examination:

The cost of the previous hearing over the period beginning with June 1, 1930, up to and including August 1, 1932, was $45,868.66.

Cross-examination:

Subsequent to a meeting with respresentative members of the Kansas City Livestock Exchange or rather representatives of several of the firms respondent in this hearing with Mr. Bachmann and Mr. Burns, Mr. Gage and I called at Dr. Butin's office where Mr. Bachmann was working and some discussion was had relative to the application of Tariff No. 3 then in effect at the Kansas City market.

I delivered the so-called test sheets that had been gotten [fol. 1322] up by the various respondents showing application to their business to Mr. Burns. I recall with regard to our conversation with Mr. Bachmann that I made the remark that the word "drafts" as set out in the tariff meant the aggregate number of head in drafts weighing within the various weight classes and contained in one consignment. We were discussing the application of the tariff in respect to the reduction in the rate where there were more than 20 head in one consignment of cattle of the various weights referred to in the tariff. At the time Mr. Bachmann and Mr. Burns made a request for some of our test sheets I told them that the various firms had made a considerable number of tests and had delivered the work sheets on these tests to my office and that I would have to look some of them over. The matter slipped my mind for several days and when they made the request again I gathered up a bundle of the sheets which happened to be lying in the office and took them down to Mr. Burns. I turned them over to him with the statement that those sheets did not refer to the test made on Tariff No. 3 but they did contain the basic information they desired. I have gone over these sheets in my office and I find that on the top of that file of sheets there were sheets from some five or six different firms where one of the tests was made on the sheep rates. The remainder of the file of sheets contained information as to cattle and calves and I found that those sheets constituted tests made by various firms which had instructions

to make their tests on the basis of rates different from those [fol. 1323] adopted in Tariff No. 3. There were several firms which made their calculations upon the basis of the tariff in contradiction to the instructions that had been given out. These sheets could have been used in making a test of Tariff No. 3 because the basic information was there. I recall that Mr. Gage asked both Mr. Bachman and Mr. Burns to analyze the account sales and draw off sufficient information to apply Tariff No. 3 accurately and arrive at the amount of reduction it would cost in gross revenue. They both said it was too big a job and that they could not do it with the facilities they had available and in the time they had available to make their audits. These sheets were used in testing different schedules similar in structure to that of Tariff No. 3 but the computations were made on the basis of various changes in the case of different firms in the various brackets of this tariff. The individual firms were applying in varying amounts 5 cents up and 5 cents down in one bracket or the other to determine what the result would be in order to arrive at an equitable reduction in the rates.

Redirect examination:

In analyzing their account sales on these particular work sheets to which we have referred, the firms were instructed by various individuals who were working on the rates to analyze the second week of the months of January, April, September and October, 1931, respectively. These work sheets did include a take-off for those weeks showing the number of head in each weight classification and each consignment. In getting up these work sheets the individuals [fol. 1324] who were working on those rates laid out columnar forms. On the left-hand side of that form was a place to analyze rail shipments and on the right-hand side was a place to analyze drive-in shipments. Under each of those two classifications there was a column for the date, the number of head, the number of drafts over three, the number of account sales prorated, the number of extra checks and then under the classification of "calves" averaging under 400 pounds we had a column which showed, first, 20 head, then a column which showed the revenue from the first 20 head, and a column showing over 20 head, and

a column showing the revenue which would have been derived from the number over 20. We had the same columns for weight classification of cattle averaging over 400 and under 800 pounds and for cattle averaging over 800 pounds. We had a column showing the total revenue which would have been derived from proposed Tariff No. 3 and a column showing the actual revenue under Tariff No. 2.

Government Exhibit No. 138

(Whereupon Government had marked for identification as Government Exhibit No. 138 three sheets entitled on one "Cattle and Calves", another "hogs" and on another "sheep".)

The analyzed forms contained in proposed Government Exhibit No. 138, without regard to the figures thereupon, constitute a printed form which is made up for tests subsequent to the time that Tariff No. 3 was put into effect. There were other forms printed previous to the time that [fol. 1325] Tariff No. 3 was filed which with little variation are similar to those forms. It is very possible that the data which I furnished Mr. Burns and Mr. Bachmann was contained on this proposed Government Exhibit No. 138. I do not recall definitely whether this is the case or whether the information I gave them was contained on forms which had been constructed previously to the time that Tariff No. 3 was filed. Both forms were constructed for the purpose of abstracting the necessary information from account sales which could be utilized in making the actual tests. During the time that the various firms were arriving at their final conclusions with regard to Tariff No. 3 considerable discussion was had in my office because it seemed to be the natural and central place for the various individuals to congregate and the information which the various firms furnished was concentrated in my office. I became more or less familiar with Tariff No. 3. As far as making any official interpretations of Tariff No. 3 is concerned, I have neither the right nor the authority to do so because these tariffs are filed by each of the individual firms and in my official capacity as secretary of the Kansas City Livestock Exchange I have no concern in them at all.

(Whereupon the witness was excused.)

[fol. 1326] MR. EUGENE BAUMAN, a witness called by the Government, after being sworn, testified in substance as follows:

Direct examination:

I am engaged in the business at the Kansas City Stockyards of livestock purchasing and brokerage. In other words, I am a livestock broker taking care of speculators and shippers. We buy cattle on orders for the independent packer and stock cattle for the country trade. I am what is commonly called the order buyer and broker. I clear cattle for the traders who operate on the Kansas City stockyards.

They have me under a $45,000 bond and the traders who clear do not give any bonds to the Government.

Recross-examination:

I think that without the trader operating down there it would be a calamity. There would be no competition. I have had men buy trainloads of cattle when they were a drug on the market here. We have found places for them and shipped them all over creation, taking our chances on them. There were 19,000 cattle carried over last week and these boys went out Monday and bought up this cattle at prices that I would never have had the nerve to pay. They are still down there. It would be a calamity if the brokers and speculators were taken away from the stockyards because the average speculator is in competition with the packer and invariably we pay more money for the livestock than the packer pays for them. If they could mark their tickets like they do the hog tickets it would be a fine [fol. 1327] mess. When the market starts down the packer is generally the first to go out. He lays right down and livestock is perishable.

Whereupon the witness was excused.

Government Exhibit 127-A

Government offered in evidence Government Exhibit 127-A consisting of a pamphlet for each of the States of Arizona, Arkansas, Colorado, Kansas, Missouri, Nebraska,

Oklahoma, Texas and Utah, containing data in County Table 4 in Lines 35 to 72 relative to cattle and swine on farms. These pamphlets were obtained from the Department of Commerce and are census figures bringing down to date the figures introduced at the previous hearing in Government Exhibit No. 27.

Government Exhibit 127-B

(Whereupon Government offered in evidence Exhibit 127-B.)

This exhibit was offered to show the sheep population as contained in County Table 9, Lines 1 to 35, both inclusive, for the same States enumerated in connection with Government Exhibit 127-A. This exhibit is a continuation of Government Exhibit 27 offered in evidence in the former hearing.

Government Exhibit 128

Government offered in evidence Government Exhibit 128, a compilation containing the publication of the Department of Agriculture known as Crops and Markets. This is a [fol. 1328] monthly publication and the issues included in the proposed exhibit are for the months of January to August 1932, both inclusive.

We offer that portion of the publication containing livestock statistics under the heading "Livestock, Meats, and Wool."

This exhibit is offered as a continuation of Government Exhibit 28 offered at the previous hearing.

Laurence G. Trickett, a witness called by the Government, having been previously sworn, returned to the stand and testified in substance as follows:

Redirect examination:

Government Exhibits Nos. 113-E, F and G

I have checked the exhibits marked for identification as Government Exhibits 113-E, 113-F, and 113 G and made the corrections in lead pencil in these exhibits.

(Whereupon the exhibits were received in evidence.)

Recross-examination:

Respondent's Exhibit No. 205

Respondent's Exhibit No. 205 shows the total receipts of cattle and calves and sheep received on the Kansas City stockyards together with the number of head sold, the per cent of which the sale represents to total receipts, the through shipments and the per cent the through represents to the total receipts for cattle, calves, and sheep. The column headed "through" comprises all through cattle, calves and sheep which came to Kansas City to try the market and was not sold but shipped on, and also livestock [fol. 1329] stopped at Kansas City for feed, water, and rest without trying the market.

(Whereupon Respondent's Exhibit No. 205 was received in evidence.)

(Whereupon the witness was excused.)

[fol. 1330] Evidence Offered by Respondents

Mr. Alan Wilson, a witness called by Respondents, after being duly sworn, testified in substance as follows:

Direct examination:

I live in Chicago and am one of the partners of the firm of John Clay and Company, which maintains a market agency on the Kansas City market. Mr. Clay, Mr. Connor and Mr. Smith are the other partners. As to what the partners themselves do in connection with the management, supervision, and operation of our agency here at Kansas City, it covers a multitude of sins. I would say, making a broad general statement, that the members of the firm of John Clay and Company act in the same capacity as the administrative officers of any concern who do a large business. For example, we are more or less familiar with Tom Wilson, who is at the head of Wilson and Company.

I presume that our supervision and control over these various offices is a good deal the same as any management and control of the business of any similar concern. All of the partners devote their personal time and attention to the

business and necessarily to each particular commission house in the chain. I came in here yesterday and spent all day with our people at Kansas City. I got up this morning and went to St. Joe and spent the day there today. I am going to catch the train for Fort Worth this afternoon and [fol. 1331] spend tomorrow and the next day there, that is in connection with the supervision and management of these commission houses entirely. While I am in Chicago I am personally active every day in connection with keeping in contact with the business and exercising an executive control over them.

Mr. Clay and Mr. Connor devote their personal time and attention to the business as I do. That situation has existed right along throughout each year since we have been partners in the firm. The Chicago office receives statements of business every week from the local houses such as the one at Kansas City. There is never a day goes by but there is an interchange of correspondence between the Kansas City office and our office. There are general services, financial, providing legal advice, and matters of that kind that are attended to at Chicago. The expense of those services is borne in Chicago. Quite recently there has been a charge made for that at Kansas City. I would not say that there was no charge made for administrative salary in 1931. There was a portion of this expense charged to the Kansas City office. That is, part of the general office expense.

There are some expenses of that kind, which we can handle more economically at Chicago than if we had at the different branches a set of executive officers and a board of directors. There have been losses resulting from the transaction of the loan business in the last few years. As pertains to 1930 and 1931, any advantages that have been [fol. 1332] gained in volume have been substantially offset by the losses in loan business. It is rather difficult to come in here and appraise our own values. Lots of times, trying to get a job, we try to value the other fellow if we cannot value ourselves. I don't know how you can base the value of the members of any firm to the firm itself. I certainly hope that the activity of the partners and the name of John Clay and Company has a decided value. Naturally the experience of the partners has added to their value to the business. They have spent a lifetime in it. I think I have been in the business thirty years or thereabouts.

Cross-examination:

Mr. Smith manages the Denver house. The other members travel more than I do, I imagine, with the exception of Mr. Smith. I think it was in July when I was in Kansas City before. I come down here about four or five times a year. The other members do not come to Kansas City as much as I do. In a degree we divide the territory.

The character of my business on these commissions and the local houses is familiarizing myself with the organization and what is going on. There is no particular branch of the office that I am more interested in than any other. I do not personally supervise the activities of the firm in connection with the buying and selling of livestock. I do not personally engage in that buying and selling at any one market. My firm has a local manager here at Kansas City. I am not primarily interested in the livestock loan work of [fol. 1333] John Clay and Company but do handle some of their financial affairs.

The local house at Kansas City accounts to use once a month. We do not maintain any accounting force there to handle the daily affairs of this firm at Kansas City except we have an account on our books, a running account, a number of entries in every day, and money they draw. We are a sort of a financial and administrative center for these local houses. It would be ridiculous for the folks at the Kansas City office to consult with us in Chicago each day as to the prices of livestock; that is left to our local folks here. When our folks at Kansas City go out on the market in the morning to sell livestock, we leave it to them entirely to arrive at their judgment and conclusions as to the price they ask and when they shall sell.

In 1931 we made some charge against the Kansas City house for general organization expense. In 1931 we also charged the local house $10,000.00 for administrative salary. We arrived at that figure by assuming that the members of the firm had a potential business and then divided that value up among the various offices. It was allocated partially on volume and partially on the matter of supervision and attention that a particular office would have to have or had.

We do not determine the value of a local commission office

by its value as a loan getting center. To a large extent we rely on our local branches to get loan busienss for us. John Clay and Company has been one of the large livestock loan concerns of this country and it still is. John Clay himself [fol. 1334] visits these local houses a great deal, but recent years he has not come to Kansas City very often. The $10,000 charged against the Kansas City office for administrative salaries is not an estimate of the profits which this house should yield to us either from the commission business or the loan business. I don't think it was anticipated that on the basis of past performance the business would pay $10,000 but naturally it was hoped. Naturally, we have to have some idea as to the profitableness of the Kansas City house to John Clay and Company. I don't believe we ever considered the value of the Kansas City house from the loaning standpoint. The local house here at Kansas City does handle a great many of the loans for John Clay and Company. If a man is shipping to the Kansas City market, when he want[illegible]row some money he would apply to Kansas City for it. They make very few loans without referring them to us in Chicago. After we have paid our expenses of the Kansas City house the profit, if any, is transferred on the books of the Rookery office which is our Chicago house. Regardless of whether it was paid to us in the form of profits or was paid to us as a direct payment, it all goes to the same place. If this $10,000 item is placed on the books here and whether paid to us as a direct payment or whether entered at the end of the year in the profits of the business here at Kansas City it is all the same and I would say that under that construction it would be a book entry. We are in the same position as any [fol. 1335] manager who depends upon the profits of the business for his income.

Redirect examination:

We think this $10,000 a year is intended simply to represent an extremely reasonable appraisement of the time and effort the partners devote to the business. In connection with the general level of livestock prices, we do consult with the management here at Kansas City and give the local office the benefit of our advice. It would be out of the question for us to attempt to influence particular individual transactions from day to day. We do feel that we have

probably a little more general information, keeping in constant touch with our ten offices, than any individual office possibly could have. Frequently we try to communicate this information to these various offices for the good of our customers. We try to keep in just as close touch with the situation as we possibly can. We handle the finances of the local concern here and furnish it with the working capital that it needs to operate on. Frequently they touch us for fifty, sixty, or seventy-five thousand dollars at a wallop. Mr. Vance told me here on yesterday that they were drawing on us for $50,000. Twelve thousand five hundred dollars working capital would be entirely inadequate at Kansas City. We would have to have a very good line of credit with the local banks to be able to conduct the business on $12,000 capital. That would very largely involve paying some interest charge on that credit. It is the endeavor of the administrative officers of John Clay and Company to keep all expenditures that are made at the local office at the lowest [fol. 1336] possible level that we can keep them and still maintain the proper kind of service that our customers require. That is true of business getting and maintaining expenses. We have not considered business getting and maintaining expenses of this office unreasonable or unnecessarily high in the past.

Recross-examination:

John Clay and Company has commission houses on ten markets. As a firm we do not control a bank or a ranch. We do not enter into any feeding ventures and we do not enter into any speculative ventures. Some of the individual members of the firm have ranching and banking connections which require some of our time and attention. Over a period of time the livestock market business of John Clay and Company will vary from a million and a half to thirteen or fourteen million dollars. Naturally, it is higher some years than others. The $50,000 which Mr. Vance drew on us for was in connection with the commission business and not the loan business. It was in connection with the buying of cattle. When he asks us for that much money we do not question it. To some extent we disseminate the information through the weekly paper which is issued by John Clay and Company. We make a charge to each house to maintain and support that paper. I have no way of evaluating the value of the management to the firm.

Redirect examination:

I would say that there is a decided economy to the local organizations resulting from the fact that we publish the [fol. 1337] paper in Chicago. The loan business of John Clay and Company is of decided value to the commission business in retaining volume on the open market. John Clay and Company furnishes the capital which constitutes the equity in that loan business.

Recross-examination:

Mr. Reed has been our local manager here at Kansas City since 1924. I regard him as a highly capable man. I regard him as competent to manage and look after the local affairs of our house here.

(Whereupon the witness, Mr. Wilson, was excused.)

Mr. Frank Witherspoon, a witness called by the Respondents, after being sworn, testified in substance as follows:

Direct examination:

I am connected with the Witherspoon Live Stock Commission Company, one of the respondents. I testified at the former hearing. At that time I prepared and identified Respondents' Exhibit 29, being an exemplification of typical methods and practices employed in the operation of the livestock commission agencies.

I think there have been a few extra requirements made on commission men, but the methods and practices themselvs have not changed materially since that hearing. In the handling of our business I notice that the demands for appraisal work and country services have increased some. A short time ago Mr. Ross of Fort Worth, Texas, asked me to come [fol. 1338] to Fort Worth and when I arrived there he told me that he wanted Mr. Sanders, our fat steer salesman, and myself to handle the marketing of 1700 cattle and Mr. Ross asked us to go to the Flint Hills country and look at these cattle several times. After we had spent considerable money servicing that particular string of cattle he decided to put them on a feeding contract in Illinois, so we were out

that expense with no return. Just this last week I was called to go to Nebraska to place some cattle on a feeding contract for the E. B. Johnson and Sons estate and those cattle were placed in what I would call the Omaha territory. I feel that there will be practically no return. I could go on and give a good many concrete cases in all these lines that in my opinion were not so general in their requirements when the other case was heard. I also might mention that we are having a good many extra regulations and requirements around the market, regarding tuberculosis in cattle. About a year ago there was a meeting in Chicago where representatives from a great many states met and it was decided after 1934 cattle would have to be either tested for tuberculosis on this market or come from what was known as a "clean" area. Since that regulation started we have had to spend a good deal of time trying to find outlets for the purchases of cattle coming from the southwest that were in what they call an "accredited area." I believe I could truthfully say that we are getting more of this kind of regulation round about us and there is a tendency on the part of the owners of cattle to ship from the ranges in the western [fol. 1339] country direct to the feedlots and pass up the center markets, because at such places as Morris feed yards they are not encountered with a lot of these extra regulations and the doubling up of freight rates. I deemed it necessary to render the services to Mr. Ross and Mr. Johnson because those demands are made upon us by our customers and if we do not render that class of service probably firms of Omaha or other places will render them to these particular parties. If we render these services and are out that money it increases our expenses and that means an increased per unit cost in the handling of the business. A few years back we did not have the demand and I do not believe other firms had the demand to render these particular services as well as many others. A general refusal to render that service upon request of our various customers would cause our agency to lose the business. That would run the unit cost up as the volume went down. It would have an effect with respect to the total volume of business at Kansas City if other firms followed the same policy at the Kansas City market, because these parties would seek other markets. The total volume at Kansas City would be less and the unit cost would be higher. I have ob-

served the decline in the volume of cattle marketed at Kansas City. That has occurred despite the efforts that we have made to retain or increase volume. This rate on livestock in and out of the market works to our disadvantage as against a rate direct from the ranges to the feedlots. It affects our volume and increases our per unit cost because [fol. 1340] of our shortage of volume.

The way we regulate our own salaries or profits is to draw out a salary for each owner during the year and then at the end of the year we may declare a dividend if we think it best to do so. This salary is really in the nature of a drawing account.

During 1931 I used all possible effort to economize in every feature of our operations and with respect to all classes of expenditure. Considering the conditions that then confronted us, I consider the expenditures made, as reflected on the audit, reasonable in amount.

Anything that is sold to the packers where we have high-powered competition, so far as talent is concerned, carries with it a tremendous responsibility.

I am acquainted with John Bachmann, who was in charge of the audits for the Government. I remember that just before the original case was heard Mr. Bachmann came to our office and there was some friendly discussions pro and con "off the record." I do not remember ever discussing in a serious way the distribution of costs. I do not want it to appear in this record that I have gone on record regarding any positive plan of distribution of costs in any conversations that I have ever had with Mr. Bachmann. I do not know how Mr. Bachmann allocated his costs as between species, carried on down to modes of arrival, in respect to our firm. From a practical standpoint his unit costs seemed out of balance to me.

[fol. 1341] I have practically spent my life in the business. My father's experience would cover over 40 years, either in the commission business or the handling of cattle. I came to the yards in 1898, during the summertime, and after I got out of school. I have served at one market or another continuously since 1902. Before 1898 I had worked with my father either in the feedlot or on the range. My experience dates back some 30 years as to the market agency business.

In the original establishment of unit charges I recall that

the value of the cattle was considered in the discussion, so far as rates were concerned, but I do not remember that any exact percentage was ever mentioned. If you would ask some of the old-timers down there about it you would get them all to agree that there was about two per cent in mind when they discuss this. The purpose was to keep these charges down a little under other lines of business like real estate, but I don't recall whether my father in discussing it with me ever said two per cent. That is a little back of my time.

Respondents' Exhibits Nos. 201 and 202

Respondents' Exhibit No. 201 is an account of purchase for the account of W. H. McBride of Boyle, Kansas. Mr. McBride came into our office and told us that he wanted to buy a car of steers. Our order buyer bought these cattle for him and after the purchase was made he wanted our company to wait on the collection until he could ship some [fol. 1342] of his fat steers. We were forced into the position of taking care of Mr. McBride in the handling of the payment for his cattle that he purchased. We accepted his draft as of October 18, but we did not present that draft for payment until October 25, the day that he shipped his fat cattle. The interest on this amount for that time was $1.78. Mr. McBride has shipped to us for a good many years and we felt that under the circumstances we should absorb this interest in our general expenses. Exhibit 202 will show the truthfulness of my statement that in some cases shippers order a 40-foot car and the agent furnishes two 36-foot cars. When Mr McBride shipped his fat steers he availed himself of this opportunity and ordered a 40-foot car, but the railroad furnished him two 36's. The railroad enjoyed a revenue on that extra weight, whereas if we had had our rates on a per-car basis we would have to have charged for just one car, and according to the order of the Secretary of Agriculture in this particular instance we could not charge but $16.50. We would have been compelled to put in free of charge a lot of additional services that bring about a discrimination in my mind between rates. Under Tariff No. 3, Mr. McBride paid on this consignment of October 25, $26.60, or $10 more in the form of commission than he would have paid under the Secretary's order. The railroad was able to protect itself in

the extra poundage as it has no maximum. The maximum commission charge provided for in the Secretary's order if imposed on it in this particular instance would bring about an inequality or discrimination in charges. The total [fol. 1343] weight of this consignment was 36,340 pounds. They came in in two cars, although they were billed as one. These cattle sold for $2,347.55. Under the Secretary's order the commission would have been seven-tenths of one per cent of the gross proceeds, and under Tariff No. 3 it was 1.13 per cent of the gross proceeds. These steers were not of choice or top quality or grade. The best grades of cattle at that time on the market were selling somewhere from 7½ to 8 cents, and these sold for $6.50 per hundredweight, with one out at $5 per hundredweight. This particular consignment included steers weighing over 800 pounds, and the commission charges were under paragraph 3 of Section A covering the sale of cattle by rail.

I think that it is important to have a uniform charge at a market, but I can not see how anyone could consider it equitable to use a particular plan of rates and apply it to all markets alike, because, for example, this market here is a rail market. If we take the rate that produces a good revenue at a drive-in market and take the same rate and apply it down here, it is very apt to throw things out of kilter. If this were primarily a truck market, we would be devoting the major part of our efforts and activities to securing and handling drive-in business. The rail business would then be secondary.

(Whereupon, Respondents' Exhibits 201 and 202 were received in evidence.)

Cross-examination:

There is a demand for appraisal service at present on [fol. 1344] account of the uncertainty of conditions and on account of the growing competition situation from other markets. I believe that those two are the major reasons for this added requirement or demand.

At the time of the other hearing, I believe that there was not that urgency of making extra expensive trips like there is now. They expect us to come out and look at their cattle and expect us to spend a half a day or a day to sit down and visit with them. If you don't do that other people at

the other markets will, and, of course, there are some people at our own market who will avail themselves of an opportunity to cut in on us. If these cattle go to another market, it reduces our volume. If we don't go out and see them, we might find an added competition in the movement from the ranges direct to the feedlots, and that reduces our volume at the terminal markets. I find that there are little centers popping up everywhere where these cattle are being sold which cuts down our volume. The volume is being affected even with all this extra effort. If we don't spend that money we could not maintain our volume. We have not added to our personnel, because we didn't figure that it was business judgment to add any extra expense when we have diminishing volume. On account of the flow of cattle here at Kansas City it has been possible for us to go to the country the latter part of the week and perform those services. We have been able to do that the week-ends now. If we had received the volume that we used to receive, we [fol. 1345] could have reduced our unit cost through that volume and at that time there was not this demand. Back in the old days, the Kansas City market received very light cattle over a period of about three days, and we have narrowed ourselves down to a smaller spread all the time. The decrease in the volume of business acts as a spur to us to attract business, but we have been so busy servicing our regular trade that we have not had much opportunity to do it. If we did not service our regular trade that business might go elsewhere. I think that over a period of five years every agency has tried to get all the business that it could get, when they had time to try to get it. To a degree there are agencies at the Kansas City market and also at other markets which are more active right now in getting out in our territory and attempting to get the business of our customers. We must not overlook the competitive situation as far as it relates to other markets. It is not wholly chargeable to the local situation. To a slight degree it is due to the local situation. To a slight degree that is due to the slackening in the volume at this market. There was practically no demand for this kind of service other than helping place cattle on Kansas grass around ten years ago, but there has been since that time an increasing demand in the servicing of that class. There has always been a demand to go out and look at cattle in the country.

Those demands have been increasing. We have to turn them down some in view of the fact that we could not get to them. I don't think any firm could possibly comply with all such demands. They have to use business judgment. [fol. 1346] To a degree, as some firms increase their activity along that line it would be necessary for other firms to do the same.

When we filed Tariff No. 3 we made another slight reduction along the line that I last explained. I think our books would reflect that our expense in going to the country is as great or greater than it was last year and that our postage is greater than it was last year. I think our postage would reflect a greater increase than the increase in postage rates because we have so much mail this year which meant nothing to us in the way of revenue. We have had a little less expense on account of meals of our employees at night. I believe you will find that we are having a greater telephone and telegraph expense, first because of the inquiries from the country, and second, because of this new added tax. I believe we have our salaries down so low now that the men who work for us could stand practically no further reduction and since my father's death I cannot see where we could cut out any of the costs for administration and things like that.

The Kansas City market received its peak receipts for the year 1931 on October 12 of 30,002 cattle. The peak load for the market in 1929 was 33,745 for one day and for 1930 it was 35,157. In the case of the Witherspoon Commission Company the peak load in 1931 was 85 cars on October 12 and 62 cars in the same year on October 19 and 52 cars on October 26. This peak load we have in the fall of the year makes it imperative for us to keep an organization together to handle it. I mean what we would [fol. 1347] call a skeleton organization, the salesmen and the talented part of our force. The buyers are more critical than they used to be even though to a certain extent the shippers attempt to grade their stockers and feeders before they ship them. We have to sort considerably.

As to budgeting our expenses we will meet around the table and say that we are going to keep our traveling expenses within a certain amount each month. In theory that is fine but in practice it is not very good because one month we will receive more demands to go to the country than

we do other months. Where we get hit hard is telephone calls from New Mexico, Texas or other points. When a man calls us up and advises us about a shipment we do not pay it but if he calls us up and asks us to come down, it depends upon the nature of the conversation over the telephone, but usually we have to pay most of those calls. We try to avoid as much of it as we can. I think that our rules right now in respect to that are just about as stringent as they could be, considering our present conditions. If we refuse to pay these telephone calls and these telegrams, while the country is in the condition it is in, I believe it would be very detrimental to this market. The only place where there might be some extravagance would be where they would think some prospect might buy some cattle. Under the rules they can pay all those telephone calls and telegrams. The anxiety to build up a price level at the market naturally prompts that sort of thing.

[fol. 1348] The fact that the highest priced salesman sells fat cattle does not mean that the other classes of livestock are sold by salesmen who are less efficient. I think an employee salesman of fat cattle can be just as efficient as an owner salesman of fat cattle and can sell them as well. It is very important that every animal should be sold well, and I think that whether a man draws $100.00 or $200.00 a month, he tries to sell the livestock well.

If we just handled an exclusive rail business and no drive-in business, naturally our costs would run higher on our rail business than in the case where we receive what we call drive-ins and handle them with the same force that we handle our rail business. There is just naturally that help in keeping down our unit costs. In our case, we have a fellow to bring the truck cattle over from the chutes and that is extra. There is no other extra expense to our firm from the time they are delivered to our pens until they go over the scales.

I do not think you can put all the emphasis on value. I think value is a factor and I think the operating costs of the yards is a factor. You have got to consider then what would be an equitable adjustment and you have got to make what you think would be a fair adjustment.

We have not in our files one objection to the tariff. I think that in any tariff cases can be recited of such variations. I do not believe it is humanly possible for the best

expert in the United States to figure out a tariff that would [fol. 1349] be just exactly fair to everybody under all circumstances.

My firm has a branch house at Wichita and one at Fort Worth. They are under the supervision of our firm. We have had the Wichita house since 1915 and the Fort Worth house since sometime this summer. I make trips to those offices at different times in the year, but we have managers at both houses, and we have a profit sharing contract with those managers, which enables me to direct most of the responsibility to them. However, I don't completely overlook those other two houses. Sometimes those houses forward livestock to our firm here. We are practically out of the loan business. There are times when we are forced into it.

For example, if we have 40 head of cattle in a consignment, with this sort of a rate, the per head charge would naturally be a little greater than if that same consignment were 100 head, because that 100 head divides up that extra cost in the beginning, and it more or less tapers out into an average lower per head charge. It is my view that there are certain fixed expenses that attach to any consignment regardless of whether it is large or small.

Redirect examination:

It is my opinion that the legend of business-getting-and-maintaining expense, shown on page 24 of Government Exhibit 115, with respect to our firm, may be confusing to anyone who is not familiar with the practical operations of a [fol. 1350] market agency. It gives the impression that the expenses under that heading were incurred because of the active competition between agencies in trying to get business from each other. It shows that the advertising expense of the Witherspoon Livestock Commission Company for 1931 was $2,970.95. The blue audit shows that advertising is divided into the following classifications and amounts: newspaper ads, $361.25; circular letters, $989.65; postage $1,151.60; specialties, $299.70; and other expenses, $168.75. I believe that possibly the newspaper advertising should be considered as business-getting-and-maintaining. In every one of our newspaper ads for our company we run a heading in bold type, "Eat More Meat." The money expended for specialties should be included under the legend

of business-getting-and-maintaining. I believe that some other legend should be used for circular letter expense and postage expense to give to the Secretary of Agriculture clearly the right impression. I believe that the major part of this expense referred to should be under the legend of "auxiliary selling service." I think that a major part of this expense is used in order to serve the patrons who have already been shipping to us. Since that expense is incurred in servicing the patrons who have been shipping to us, the part of the money used in sending them market letters and part of the money used in paying postage to send those market letters is an expense that rightfully belongs to the selling side of our business. In our particular case, probably 30 or 40 per cent of this money should be allocated to business-getting-and-maintaining, and the remainder [fol. 1351] should be allocated to auxiliary selling service. We revise our list the first of each year, taking as a basis for our circular letters the names of our patrons who have consistently patronized us over a period of time, plus prospects. I do not want to disregard totally the necessity of business-getting-and-maintaining. There is a competitive situation between markets and between companies that from the viewpoint of a layman I think should be considered. In fact, I do not see any part of our business where we could cut expenses more and still maintain efficiency and good service.

I would classify business-getting-and-maintaining in this schedule $1,686.20 instead of $2,970.95. Of this amount, only $361.25 would represent newspaper advertising and $299.70 would represent the purchase of specialties.

The traveling expense, according to the blue audit, is divided as follows: soliciting, $847.88; appraisal, $3,767.61; and conventions and meetings, $550. I believe that soliciting and the major part of the convention and meeting expenses should be allocated to business-getting-and-maintaining expense, but the appraisal expense of $3,767.61 should be allocated to auxiliary selling service. Three thousand, seven hundred sixty seven dollars and sixty-one cents ($3,767.61) of this total of $5,165.49, appearing in the column under the heading of "travel", should appear under the heading of "auxiliary selling service", with the exceptions mentioned in my statements in the record. The exceptions which I noted should be segregated to drive-ins [fol. 1352] and some of the hog business.

Under the heading of "general automobile expense," I think that the soliciting expense of $99.67 should go to business-getting-and-maintaining, and the appraisal expense of $398.68 should go to auxiliary selling service. All the money that we spent on our customers who have been shipping to us for a long length of time in the way of local and miscellaneous entertaining should be classified as auxiliary selling service. I think that the money spent covered by the heading of membership dues and exchange assessments is spent in an effort to maintain a higher degree of general market efficiency and a higher degree of integrity on our market. It is an expense necessary in maintaining the position of all agencies, and I believe it has just as much importance as the maintenance of a location itself for an agency. I feel that it has as much importance as the rent itself. I believe that I failed to mention that there is a lot of development work here at Kansas City. I would call it "market maintenance and development." None of this money is expended to solicit business for my firm. It is spent for the general good of the market, which means the general good of the patrons of the market. I think that this expenditure is just as necessary as the salaries for salesmen and so forth. When I referred to the blue audit I was very much confused when I saw the legend "Exchange Soliciting", because that is not a fact.

The total of these expenses on page 24 was $9,995.11. I would have included only $3,115.55 of that total under this [fol. 1353] particular classification and cost segregation. I would have classified $5,613.94 to auxiliary selling service and $1,165.62 to general expense or market maintenance and development.

Comparing the average receipts and the peak receipts of Kansas City and Chicago, it is very easy to be seen that there is more of an average constant flow of cattle and calves through the Chicago market, while at Kansas City we have these extreme lows and extreme highs.

Respondents' Exhibit 203

I now wish to refer to proposed exhibit 203, which is a graph that shows the difficulty of the Witherspoon Livestock Commission Company in handling its unit costs. During the week of October 5, 1931, the Witherspoon Livestock Commission Company received on Monday of that

week by rail 2,312 cattle and calves; Tuesday, 1,005 cattle and calves; Wednesday, 425 cattle and calves; Thursday, 88 cattle and calves; and no rail shipments on Friday. On Monday of the same week the firm handled 35 head of drive-in cattle; Tuesday, 3 head; Wednesday, 19 head; Thursday, 33 head; and Friday, 1 head. It can be very easily seen that in this particular week there was an extremely high peak reached, and it naturally took an organization to handle as near as possible that amount of business. In order to handle a peak of this kind, salesmen and other employees have to be employed over the period of the year. This exhibit, on the other hand, reflects a more constant flow of drive-in cattle throughout this particular week. I have referred to the week of October 5, but during the [fol. 1354] week of October 12, the same year, the situation was more difficult on account of the fact that the firm received on Monday of that week 2,856 cattle and calves. The next day there was a very abrupt drop in business to 957 head of cattle and calves; on Wednesday, 250 cattle and calves; on Thursday, 166 cattle and calves; and Friday, 68 cattle and calves. In that same week this company did not have any drive-ins on Monday and Tuesday and only eight on Wednesday, 25 on Thursday, and five on Friday. This exhibit was prepared under my direction and I have no record of the number of cattle and the number of calves represented separately in these cars.

Considering the fact that the salesmen selling cattle for my firm spend their time in rendering this auxiliary selling service during the days and weeks and particularly during the latter days of the week, and particularly during the periods of the year of relatively low receipts, I feel that it should not be considered stand-by or idle time. I feel that if at Kansas City we did not have these highs and lows or peaks and valleys that we could through that situation to an extent reduce our unit costs.

I think that the amount of $4,073.50, under the legend of business-getting-and-maintaining, under the salaries account on page 20, exhibit 115, is not, from a practical angle, properly allocated. The Witherspoon Livestock Commission Company has to employ all its employees as listed in the questionnaire of the Government in the handling of live- [fol. 1355] stock on the market. These men would have to be employed in the operation of our business if they did not

go to the country at any time. I feel that this amount of $4,073.50 should be placed against the general operations of the business within the confines of the Kansas City Stockyards. I feel that when we send men to the country for auxiliary selling service, or for business-getting-and-maintaining that the traveling expenses in doing this particular work are the only items of expense that should be split up between business-getting-and-maintain-g and auxiliary selling service.

When I say "auxiliary selling service", I mean the service that the Witherspoon Commission Company performs in servicing its trade. By "business-getting-and-maintaining", I mean the business that the company makes an effort to get above its regular, established trade. I contend, as a layman, that the Government questionnaire is misleading from a practical standpoint, because they have gone so far even to omit the word "maintaining" and the so-called appraisal time and soliciting expense is thrown together under the heading of "country trips", so far as this time relates to salaries. I think that the percentage of time under the entire heading of "business-getting" should be eliminated and thrown against the general expense of the business. I am not trying to pose as an expert on cost finding.

During the week of October 5, 1931, there were 403 head of calves included in Exhibit 203 and during the week of [fol. 1356] October 12, 1931, there were 837 calves included in the number. Based on my practical knowledge of the operation of business, the allocation which I have given would distribute $3,215.55 to business getting and maintaining, and the total eliminations from that category would amount to $10,853.06. The amount which I would include in business getting and maintaining expense would be approximately 6½ per cent of the gross income instead of 28.5 per cent shown on page 31 of Government Exhibit 115. From a practical business standpoint that would be a fair allocation.

Practically all of the amounts spent by my firm for charities went to the local charity chest. The contribution was made as a result of a general appeal in united action under the direction of the Chamber of Commerce by practically all of the charitable organizations of Kansas City for funds to maintain them on an annual basis.

The interest charge in connection with the firm amounting

to $71.45 has no connection with the operation of the commission business. The elimination of $100.62 for taxes under the heading of "Miscellaneous" represents taxes on the farm and is a proper elimination as far as the commission business is concerned. On the income side of the profit and loss statement of Exhibit 114-73 is the sum of $202.00 which is rent on the same farm. The profit and loss statement appearing on Exhibit 114-73 showed a net loss of $4,551.22 and yet on May 23, 1932, we filed a schedule on behalf of our firm, which has had the effect of reducing further our gross income. In my judgment it would not be [fol. 1357] possible to make further salary reductions in our organization without impairing the efficiency of the service which we render because I feel that the present salary scale is in line with present living costs. If we further reduced those salaries it might reflect on the efficiency of our organization. If salaries would be placed on an extremely low level, considerably below living costs, there is a chance to possibly effect the integrity of the employee. I feel that everyone in our employment is absolutely honest, and still I can see that business hazard from the point of management in the administration of the business. There are opportunities in the business in respect to which a lack of integrity would prejudice those whom you serve. A yardman could stand in with a man in the stockyards company over feeding cattle and make money that way in a crooked manner. A salesman could sell cattle and stand in with the trader and be crooked in the sale of the cattle. An office man could abscond. I feel that the rate of return on commissions should be sufficiently high to insure the very best service, efficiency, and integrity. I know that the Kansas City Exchange has sought for years to see that a high standard of integrity is maintained, but the chances for the condition described are greater when the salary scales are too low.

Recross-examination:

I can readily see that if we had an increased volume that would have a certain bearing on what we would be willing [fol. 1358] to pay. If our volume increases we could pay more, but I am assuming that we are facing the possibilities of a decreased volume. I think it would be generally admitted that if we had an increased volume, under existing

conditions, we could operate at a lower unit cost than we are now operating. If our volume would double, for example, our revenue would be greater and we could afford to pay more, and we could operate on a lower unit cost.

We cannot expect the volume from our trade area in the future that we have gotten in the past on account of those changing conditions in handling. Another reason, in my opinion, that we will not get as many cattle to Kansas City, out of that broad area, is because there are small packing houses springing up all over the country. There are auction rings being established and by the way at those auction places the service charge is 4 per cent of the value in a good many places. Those factors just mentioned will continue to hold down receipts at Kansas City until we can in the future toward a diminishing volume. Geography does not interest us so much as volume, and on account of the way the livestock is being handled now within the area, we have faced a diminishing volume.

Price has something to do with determining the direction in which livestock will flow to market from any territory. Another factor in that connection is the railroad freight rate situation.

I would allocate 40 per cent of the expenses for circular [fol. 1359] letters and postage to business getting and maintenance and 60 per cent to auxiliary selling service. I allocated the traveling expenses, which according to the blue audits for appraisals, is $3,767.61 to auxiliary services. I also allocated to that auto operation and auto depreciation expenses. I also allocated to the same head miscellaneous entertainment. I do not like the word "soliciting" in connection with the heading called "Exchange Soliciting." That is not a true statement of facts. I call that "market maintenance and development." The amount was $1,165.62, that makes a total of $6,779.56. I feel that the Department of Agriculture has the impression that this caption or legend of business getting and maintenance means nothing more nor less than the scrapping between agencies here to get each other's business. I have tried to show the difference between business getting effort and that part of our business where we were not servicing the prospects of our business, but were servicing the patrons who had been shipping to us in the past and maintaining what I call an auxiliary selling service. That is of just as much impor-

tance to the shipper as the selling of livestock on the market. I made the allocation of 60 per cent of our expenditures for circular letters and postage to auxiliary service according to the plan we use in our office in our circular work.

I would divide the subject into business-getting and auxiliary selling service, and cut out the word "maintenance." I do not mean that the auxiliary selling service is [fol. 1360] a substitute for the term "business maintenance", because I believe that auxiliary service goes farther than the word "maintenance" would go. To maintain a thing, does not exactly express the idea of a service that we should give to the customer. That is just a part of handling those cattle. You have got to charge that service to the selling of them or in the operation of the business. I do not mean that any of this service constitutes an actual selling of livestock, but I believe that it is chargeable to it. The appraisal service is available to all customers. We try to render it to all of our customers who ask for this service. I hesitate to spend the money if it is some new man, where I feel like we would lose money by giving him that service and he is not in that class of our regular trade. I think it would be disastrous at the present time to make a special charge for this auxiliary selling service, unless all other markets in competition with ours would do likewise. That would be mighty hard to bring about on account of our geographical location. These pastures to the west of us take some of that particular service. I grant that if every market in the country, not only terminal markets, but the community markets, had some extra service charges that would be sufficient to counterbalance the extra service charges for this auxiliary selling service, that would be O. K., but I doubt very much if we should come out boldly and list in this tariff a special charger whether we would get anywhere with it. I think it would hurt the terminal markets and have a tendency toward decentralization of [fol. 1361] business.

Our fat-steer salesman received a letter two weeks ago to meet a feeder of livestock out at Emporia to look at his fat cattle. This feeder intended to ship those cattle the following Sunday. In that particular instance that was what I would call really a prospect. He had never shipped to us and our firm debated whether our Mr. Sanders could go out and look at those cattle, but we finally agreed to send

him. He went out there and there was a Chicago man present and there was a St. Joseph man present. The Chicago man told him his cattle would bring the highest price. Consequently, Chicago got the business. If other firms would see that we were not rendering that kind of service that was demanded of us, naturally they would avail themselves of that opportunity.

It would not be practicable to vary the charge which we make for selling livestock depending on whether the customer desired this auxiliary selling service, because when we publish a rate it has been my impression all the time that it is better to put in a few extra services charges, but if we start tucking in this extra charge on this class of business and that class of business we run our market into a state of turmoil. We have some customers who consign large consignments of livestock to our firm who do not request this appraisal service. I think this caption "soliciting" has just been ridden to death.

With respect to the caption of "exchange soliciting" in the Government audit, I mean that that money that each [fol. 1362] market agency spends in that direction is the centralizing of a fund of money to help maintain the Kansas City market in the way of price quotations and in the way of concerted service to the trade, and in the way of the development of the market. When we get into the development part, there are innumerable ways that the Kansas City Exchange can help in this marketing area of ours in development work. We have the Boys and Girls Club to take care of and other acts of development. If we are going to be an outstanding market we have got to spend some money in that direction, because it is a marketing cause that we feel that it is best to chip in and centralize that fund through the exchange. With that money we make an effort to maintain the reputation and the servicing of this development work for Kansas City. That is more or less a contribution on the part of the agency to the central body, the exchange, for them to help the full community; that is, everybody in this market here. To a degree, the prime object of that activity is to attract livestock to this market and to maintain the market. If we do not do something like that we would not maintain a market or develop it. If we do not do that I feel that the livestock would go to some other market.

For the two weeks shown by exhibit 203, our receipts of cattle and calves varied more than they do at any other season of the year. Every morning I go down to the yards and go through the pens with the boys themselves. We discuss values together, but I don't make any actual sales, but [fol. 1363] I consider that a part of the selling of those cattle. I remember that on those days referred to on the exhibit, I was out on the yards, but I can not recall how many of those cattle and calves were sold on those particular days and how many were held over. These cattle were sold by a fat-steer man, stocker-steer man, butcher man, and a calf man. I was in the picture indirectly.

On the questionnaire, I placed 25 per cent of my time in the selling part of the business. I placed 40 per cent to general supervision, and the rest to auxiliary selling service and other parts. I do not crack the whip and tell the buyer that the cattle are sold to him, but I do work in selling. I go down to the cattle alley, and because of the fact that I have sold cattle for about 20 years the boys will say: "Let us go into this pen, Frank, and look these cattle over," and in a great many cases I consult with the salesman of those particular cattle, and in a good many cases I make the decision of the sale even from the office after I have left the yards. Our customers date back in a great many instances to 20 and even up to 30 years, because our family has been engaged in the livestock business in the Southwest and a lot of our contacts have been with men who have owned ranches. Since we came up here we have developed what we would call at the stockyards a native business, but I do think that the great per cent of our business runs to what we call string business.

If the flow of business were even in its nature, the unit [fol. 1364] cost so far as our firm is concerned would be reduced, but this auxiliary selling service is the thing that is separate and apart from the actual selling here on the yards, although it indirectly relates to it and should be chargeable to it. In these kinds of times, I believe that if this same volume that we now have were distributed through the week, it might add to our unit cost because we might have to hire somebody else to render that auxiliary service, whereas with this peak load we have we can use the latter part of the week in rendering this auxiliary service and use the same men that we have to handle our peak load

the first of the week in giving that service the latter part of the week. I think this auxiliary service is a growing thing. I do not think that a regular solicitor would pay any market agency. According to the rules of the Kansas City Livestock Exchange, in order for a person to solicit he has to be either a bona fide owner in the firm, a resident of Kansas City, a bona fide cattle, hog, or sheep salesman or order buyer, and there is a further requirement that they have to sell livestock on the market for a certain period of time before they can get what we call a solicitor's permit. They cannot devote all their time in the country. A certain period of time has to be spent in the selling or doing the thing that they are supposed to do on the market.

The amount of $134.90 for charity and donations appearing on the blue audit was given by us to our community chest. If I included that in any legitimate expense, so far [fol. 1365] as it affects the shipper, I want to withdraw that right now. That is just a charitable donation.

Redirect examination:

In the handling of seconds, or what we call plants, there is a charge of 35 cents per head on cattle and 20 cents per head on calves. In filing Tariff No. 3, I had in mind two things: First, these seconds and plants are delivered to our pens which eliminates that charge. There is no cost in feeding and all *that* the cost in servicing that business is just the selling, weighing, making account of sales, and rendering a check. There is no auxiliary service, or very few yard services in the handling of those operations.

(Whereupon the witness was excused.)

Mr. R. J. Kinzer, a witness called by the respondents, after being sworn, testified in substance as follows:

Direct examination:

I am secretary of the American Hereford Cattle Breeders Association. I have been secretary a little over twenty years and have been connected with the livestock industry all my life. The last Government census shows that there are 127,508 more Hereford cattle in the western and south-

western portion of the United States than all other beef breeds combined.

[fol. 1366] I have been familiar with the livestock market at the Kansas City stockyards during the past twenty years. I am a director of the American Royal Livestock Show. As a member of an appraisal committee which met on September 28, 1932, to determine the fair cash value as to the year 1931 of the services of certain men engaged in the commission business at Kansas City, we met at the office of the Livestock Exchange at ten o'clock in the morning and worked until five in the afternoon.

Respondents Exhibit No. 204

(Whereupon respondents proposed Exhibit No. 204 was handed to the witness.)

This is the report that was prepared by the committee. I in conjunction with the other men whose names appear on the second page of this exhibit, prepared this report. I acted as chairman during the sessions. We were furnished a list of the owners or part owners of the various commission companies on the Kansas City yards and requested to place in this report what we considered a fair compensation for these men's annual services. There were seven other gentlemen on this committee with me and there was no name brought before us but what some one or two members of the committee at least was familiar with and many of the men down there we were all familiar with. We went over it very carefully, considered the length of time they had been there, the work that they were doing, the character of the men, and placed in this report what we believed that we would be willing to pay these men if we [fol. 1367] were hiring them, and in the commission business ourselves. We had before us the information in regard to not only the names of the separate individuals, but the name of the firm with which they were connected, the general nature of the duties they performed and length of service in their present firm and length of service in connection with any market agencies, and experience in the livestock industry, and also the gross commission earned by the firm with which they were connected in 1931, the value of the livestock bought and sold by that firm, the number of head of livestock bought and sold by the firm as

appears on the separate sheets commencing on the fourth page of this exhibit. We had before us the appraisal of the services of a large number of the separate individuals for the year 1929 as theretofore made by some other gentlemen. I wrote the amounts and the initials "R. J. K." after the statement "appraisal value of services on annual basis" appearing on each of the several sheets in this exhibit. That was done after the consideration of the matter of what constituted a fair annual compensation as to the year 1931 for the services of the particular individual named on each sheet. We had in view not only the individuals respectively and separately named, but also the conditions that prevailed in the year 1931, according to our general knowledge as business men who had been in business in that year. We were not governed by the appraisal of 1929.

Together we gave this matter consideration as business men would in the light of what we considered to be the [fol. 1368] varying capacities and abilities of the men listed. Through past contacts I was acquainted personally with a great many of these men, whose names appear on these separate sheets. Personally I utilized that acquaintanceship in arriving at my own judgment, as I expressed it in the meeting that we had as to what would represent a fair annual compensation. The judgment of all the men did not always agree upon the amount, in the first instance, but it was all agreed to before this record was made on each individual. After it was agreed to I accurately transcribed the dollars representing annual compensation in each case upon the various sheets. I identified them with my initials.

From the information which I had before me at that time, and from my personal knowledge of the business, I believe that the amounts there expressed are representative of fair annual compensation for a full year's service in the case of each of these individuals named in connection with the operation of the various firms or institutions in the livestock commission business with which they are shown to be connected.

Cross-examination:

The American Hereford Cattle Breeders Association is an organization founded about fifty years ago for the keeping of the records of registered Hereford cattle in the United States. The head office of that association is here

in Kansas City. That association has to do with pure bred Hereford cattle. Prior to the time I became secretary of the association I was the head of the Animal Husbandry Department, Kansas State Agricultural College. I had [fol. 1369] never been engaged in the livestock commission business nor employed by a livestock commission concern, nor engaged in any business on any other public stockyards. I employ about a dozen people in the office of the association here at Kansas City. I pass upon their fitness and qualifications for employment and the nature of their services, office and clerical work. I am head of the office and employ office clerks and stenographers. I have an assistant who does considerable field work or outside work. Our work in the field consists in promoting the interests of Hereford breeders and advancing the interests of the business. When I employ a person, I bargain with him as to the salary that we will pay. We arrive at that salary by the process of bargaining. I presume the one who is seeking to become an employee seeks to obtain as much as he can. We try to give them a fair compensation for what services they can render. In determining what they will be worth, I take a great many factors into consideration. I consider what experience they have had for the character of the work that we want them to do. We try to get all the information regarding them that we can. The salary we are willing to pay has a very close relation to the character of the work we have for them to do. Some of the work is more responsible than others or more difficult to perform. We are willing to pay more for some work than we would for others. If an ex-bank president would apply for a job as file clerk, I would base my idea of his value upon his [fol. 1370] services as file clerk. I presume the capacity of the proposed employee to perform good work plays a part in my idea of the value of the services.

I would like to know just what this has got to do with the work we had down there. The Hereford Association is not on the witness stand and what I do up there to employ my help.

The ability of a person to do good work is a material consideration in determining the compensation that will be paid for that person. The ability of a person to perform a large volume of good work is a material consideration in determining his compensation.

If two people could each do work of just as good quality, but one could turn out 25 per cent more work in a given period than the other, I would consider the one who turned out the larger volume of work as being entitled to greater compensation. In employing people I would make inquiry and seek to determine the volume of work which they could do. The typewritten sheet in the forepart of Respondents' Exhibit No. 204, addressed to members of the committee, was handed to the committee when they began their labors. Those are the instructions and the charter under which we worked. That was given to us by Mr. Stebbins, secretary of the Kansas City Livestock Exchange. In the employment of people to work in any line and in the determination of fair compensation for their services, I think consideration should be given to the general, common wages or [fol. 1371] salaries being paid at the time and in the same locality for similar services. Consideration should be given to general economic conditions, as to whether there was a period of prosperity with a large demand for workers and higher living costs as contrasted with another period in which there was a lack of prosperity, a lot of people out of employment and low living costs. One of the most important factors would be the service you expected them to render and their ability to render it. I know a great many men at the stockyards, but I was not personally acquainted with everyone whose services I appraised. In the case of those with whom I was acquainted, I based my valuation of that person's services upon what I personally knew about them. In the case of those with whom I was not personally acquainted, my valuation was based upon the judgment of the other members of the committee. I deferred to their judgment where they knew the man personally. When two or more members of the committee knew the same man and did not name exactly the same figure, it was a question of debate and settlement upon a figure agreeable to all those who knew him. I took into consideration the value of these men as livestock salesmen, when they sold livestock, and if they also managed the business I gave consideration to their general personality and ability and their ability to attract and hold business to their firm was given weight. I gave further weight to the appraisal made in November 1930, which appraisal is in evidence as respondent's Exhibit No. 32. We gave very little

[fol. 1372] weight to that because we did not know who made that other appraisal. In a general way I know what many of these firms were doing, but I do not know the exact amount of their gross commissions, the value of livestock they sold, except as the amount was furnished by this report.

I am acquainted personally with Charles D. Henry. We placed $8,000 as the worth of his services because he is considered one of the best fat cattle salesmen in the yards. I base that upon his general reputation as a fat cattle salesman. That is his principal work and he is a member of the firm, and perhaps helps manage the business more or less. There is also his ability to draw business to the firm. If I were operating a livestock commission business $8,000 is the figure I would be willing to pay Mr. Henry as a fat cattle salesman. I think it was in the mind of every member of the committee at the time we placed these valuations, what we would be willing to pay these various men if we were going into the commission business ourselves and needed such services. As to whether I would pay him $8,000 a year if the business were bringing in a gross revenue of $6,000 a year, I think there are many other circumstances that would govern that, whether you are just starting in business and it may be the first year of the business it would not bring it in. I do not believe there is anybody who knows Mr. Henry, and if he was starting a commission business today that would not be willing to pay him $8,000 for his services for the business he would draw. That [fol. 1373] would be based on the idea that he would build up the business right away and it would render the salary a good investment.

I know Bryant Poole personally. As to considerations which led to the conclusion that his services were worth $2,000 less than Mr. Henry's we consider that Mr. Poole is one of what you might say one of the newer men on the yards and has not had the experience that Mr. Henry has had, and I do not think was drawing as much trade. Both of these men are fat cattle salesmen. I do not undertake in this estimate of their respective values to say that Mr. Henry could sell cattle consigned to his firm and get any better prices for them or sell them to any greater advantage than Mr. Poole could. Hr. Henry has a wider acquaintance which would naturally attract more business to the

firm. In a business of the kind we are dealing with here that wide acquaintance and ability to attract business is a very important factor in the value of the man's services, and it was given weight by the committee.

I have never been called upon to appraise the value of services of as many people as there are here in any line of work. I have been asked a great many times regarding the value of a great many people. This is my first experience as a member of a committee to appraise the value of people. With respect to the men that I was not personally acquainted with when their worth was being discussed in the meeting of the committee the men who were acquainted with them exhibited a knowledge as to those men's acquaint- [fol. 1374] anceships, personalities, and abilities to get and hold business, the character of the man as to how much business he was drawing, as to what his acquaintance was, how many years experience he has had, his honesty, and whether he was a competent judge of livestock and livestock values. At the time our committee met we were given these sheets upon which I endorsed the appraisal figures, and those sheets had on them all the data that is now on them excepting the appraisal figure.

Redirect examination:

When I was head of the Animal Husbandry Department of the Kansas State Agricultural College I had occasion to come in contact with employment of various persons. My activities as secretary of the American Hereford Breeders Association takes me to all parts of the United States and brings me in contact with cattle men throughout the Southwest generally. It is estimated that from 75 to 80% of the beef cattle coming to the Kansas City market now carry as a predominant part of their breeding Hereford strains. There has been a very substantial increase in the assets of the association, as well as in its membership to the numbers of Hereford cattle since my connection with it. I have been around the stockyards and out in the alleys and pens very frequently.

During the time I was at Manhattan we were both sellers and buyers at the Kansas City yards, and since my connection with the association we very frequently have to go down there and look after interests of some of our members who are either selling or buying here. In the preparation

[fol. 1375] of Exhibit 204 we took into consideration as best we could those factors which go to make up ability in the conduct of the livestock commission agency as expressed in the various individuals. As secretary of the Association I have frequently been called upon to choose between auctioneers of cattle. We have a great many sales during the year. I realize there is a difference in ability there just as in cattle salesmanship in the yards. If I was not personally acquainted with the man I did not express my opinion, but depended upon the judgment of the other members of the committee. The judgment of the committee was always unanimous and all members of the committee entered into the judgment that was expressed. There is never a case where a record was made until it was the unanimous consent of the committee.

(Whereupon, the witness was excused.)

Mr. Arthur P. Fielding, a witness called by the respondents, after being sworn testified as follows:

I live in Manhattan, Kansas, and am in the grain business, feed business, farming, and livestock business. I have been connected with livestock all my life. I went into the livestock business on my own account about 37 years ago. My father put me in charge of the farming and livestock end of the business about that time and I operated under his direction for approximately 10 years. I have been in charge on my own account for the last twenty five years. I have had a small breeding herd and have bought [fol. 1376] stockers and grown them out for perhaps a year and then feed them all out for the terminal markets for the next year. I have four farms near Manhattan. I market my livestock as fat cattle at the public markets. Most of them are marketed at Kansas City and Chicago. In marketing my livestock I have come in contact with men who operated commission businesses at the Kansas City stockyards. That has been over a period of the last 30 years. I was one of the men who acted with Mr. Kinzer in valuing the services of the various owners of commission firms on September 28, 1932. I heard Mr. Kinzer's testimony. I think he gave it just as we all agreed on, that the value of each individual was determined on what he could

do and his ability to do it. I tried to arrive at a fair compensation in the light of the information which we all possessed. We considered each individual separately. I was acquainted with a number of those men. I think men in the livestock commission business differ in ability just as they do in other lines of business. I recognized that in connection with the handling of my own livestock. Men to be capable as salesmen would have years of experience, they must know what cattle are worth, and must have the ability to get the highest market price for cattle which they have to sell. He has to keep himself well informed to be a good salesman. It is necessary for him to know where and who to go to, and where he can get the highest market price for the cattle which he has to sell. That will apply to any kind of livestock. In handling livestock I think cattle require [fol. 1377] greater ability than hogs. I cannot appraise my own cattle in the feed lots as accurately as I can hogs as to value. The acquaintanceship by the men at the market who sell the cattle and the circumstances under which they are fed and with the cattle before they come to market is very valuable to the man who has the cattle to market. In my opinion there is no comparison at all between the degree of responsibility essential to sell cattle as with selling grain. A grain salesman has the grain, the test weight and all the information before him before the grain is offered for sale. When the sale is made of any grain it is posted on a board and they have a lot of things to go by in offering a car of wheat or corn before it is sold. It is different with a cattle salesman. He has to be able to know what cattle are worth before he offers them. That takes years of experience and men of unusual ability in my judgment. There is less of the mechanical about the sale of cattle than there is about the sale of grain. In arriving at the amounts expressed as a fair unit of compensation we considered generally what we thought men of their capacity were worth on an annual basis in this business. We took into consideration general conditions from an economic standpoint which prevailed in 1931. In my business at Manhattan I have occasion to employ people and I have some general knowledge of what men receive in other walks of life. I utilized that information. I do not employ any high-priced men, but I employ a number of men of capacities that do [fol. 1378] not require the high salaries or high-priced men

in my own business. In my judgment the responsibility that rests on these men whom I employ is not as great as that of the men whose services I appraised. The amounts which are here expressed as to each of the individuals named are in my judgment representative of a fair compensation to them for a total year's service in the year 1931.

Cross-examination:

In connection with our grain business we have two elevators at Manhattan. We buy grain from producers and ship it. I sell feed locally. This is my first experience as a member of a committee to appraise the value of the services of people. I have been consulted by individuals about the worth of different ones at various times. My business acquaintances have asked me respecting my opinion of the values of certain people whom I know. That was just a casual matter in my contact with business. I agree with Mr. Kinzer about what he says about the factors which should be taken into consideration in valuing the services of people and I agree with him about what he said respecting the factors that were taken into consideration in valuing the services whom the committee valued. In the consideration of the men with whom I was personally acquainted I took into consideration the same things that Mr. Kinzer said he took into consideration with respect to the people he was acquainted with. I recognize the difference in general business conditions, employment, wages, and salaries [fol. 1379] and incomes as between the year 1929 and the year 1931. Everything, including salaries and wages, has gone down in 1931 as compared with 1929. People could not expect to receive as high compensation for their services in 1931 as they did in 1929. There might be a difference downward between 1931 and 1932.

I know Fred Olander, Frank Morgan, Bryant Poole, and C. B. Henry. There are a number of others whom I know and I also know a number of salesmen who were not discussed at all. They were not included in the appraisal. I am acquainted with John Clay, Alan H. Wilson, and F. H. Connor of John Clay and Company. I believe that the men that sell fat cattle should have more experience and they do have more experience than salesmen who sell stockers and feeders. The values which I put on the services of these men with whom I was acquainted was just what I would be

willing to pay these men if I were conducting a commission business and was going to employ any of them to work for me. I would not say that I would give Fred. Olander a higher salary to sell my fat cattle than I would be willing to give him to sell my stockers and feeders. He might be just as capable to sell fat cattle as he is stockers and feeders, and stockers and feeders as he is fat cattle. The amount of money I would be willing to give him concerns not only his ability to sell cattle but his personality and his ability to meet people and get business and hold business, and manage the business, and his general ability as an [fol. 1380] asset to the business. As to the basis for appraising Mr. Olander's services at $8,000 and Bryant Poole's at $6,000, considering that both of them sell fat cattle, Mr. Olander grew up in the yards here and is a very high-class man in every respect and is very capable in his line of work. Our opinion was that he was worth that much more than Mr. Poole. I was not undertaking to say that one who did ship his cattle to Mr. Olander would get a better price than one who would ship to Mr. Poole. I was not trying to determine the amount of cattle that could be sold by either one of them. I don't believe any one would know how many cars of cattle Mr. Olander could sell in a year unless he had a chance to perform that duty. As far as I know he may not be able to sell more than 1,000 cars a year, or he might be able to sell 5000 cars. The same is true of Bryant Poole. Our committee did not have before it any information as to the number of cars or number of head of cattle, hogs, or sheep any of these salesmen sold in a year. Our committee did not have before it any information as to which of these salesmen were the best salesmen with respect to being able to get the best prices for livestock. I have known John Clay for a number of years. In placing the value at $6,000 on his services we took into consideration his knowledge of the livestock industry and his worth to the firm. I think it is hard, very hard to estimate the value of a man like John Clay to his firm or to the livestock growers of the United States. I do not know whether [fol. 1381] Mr. Clay actually visited his branch here in Kansas City in 1931. My approval of that valuation was based on the fact that Mr. Clay is a nationally known livestock commission man and his ability and personality to draw to the business a great deal of business. The same thing is true of Alan Wilson and F[redacted] Connor.

Redirect examination:

With respect to Mr. Clay, Mr. Wilson, and Mr. Connor, we took into consideration the fact that they also operate other agencies. We did not intend these amounts to be representative of the total amount of compensation to which those men were entitled. We figured that this was their worth to the Kansas City house. Mr. Clay's ability to attract business was partly based on his ability to handle business and to supervise and manage the business of a commission firm. We had that in mind as to him, Mr. Wilson, and Mr. Connor. We had that in mind as to the services of those whom we appraised who worked in a managerial capacity. In appraising Fred Oland at $8,000 a year and his father who has been in the business longer at $6,000, we figured that the fact that he was now a pretty old man and although active in the business he could not devote the energy to it that his son does. We considered the information relating to the energy and activity of these men, just what we thought they could do if they were working in a concern either as a part owner or an employee of which I was myself interested.

[fol. 1382] Recross-examination:

I have not had any experience myself in the livestock commission business.

I have never been employed in any business on a public stockyards. All the business at John Clay's Kansas City house goes through the Chicago office. I mean by that that all the business of importance like the loan business or anything of that kind has to be O. K.'d by the Chicago office. Mr. Clay's, Mr. Wilson's, and Mr. Connor's work in connection with the branch here at Kansas City is general supervision, just the same as their other branches scattered throughout the country. When I sat with this committee to make these appraisals, all the information I had respecting these men was what I knew of them personally, plus what is stated on each of the sheets on which the appraisal was made, and the knowledge of the other members of the appraisal committee.

Redirect examination:

As a general rule, a fat-cattle salesman would receive more than a stocker and feeder salesman because of more experience and more knowledge of the business. There would be exceptions in some cases. In each individual case we considered the capacity of the individual salesman as we thought it to be.

(Whereupon the witness was excused.)

[fol. 1383] Mr. W. F. Fletcher, a witness called by the respondents, after having been sworn, testified in substance as follows:

Direct examination:

I live in Kansas City and was formerly head cattle buyer for Armour & Company at the Kansas City stockyards. It was eight or ten years that I was here the last time as buyer, and before that I had been a buyer here for Armour & Company. In the performance of my duties in that capacity I became acquainted with various men connected with the livestock commission agencies. My duties required my presence at the yards all the time. Buyers for a packer like Armour are of different rank from the standpoint of salary and ability and purchase different grades of cattle. Generally speaking, the buyer starts in first as a calf buyer and works up both in experience and compensation and if his ability justifies it he becomes finally a fat-steer buyer. We generally take the telephone boys and boys around the yards and bring them along up. That system has been followed for 32 years that I know of. I worked up myself. It is necessary for the buyer to correctly appraise before purchase the grade and quality of livestock he buys, and this is quite difficult to do sometimes on such a market as Kansas City. Cattle that may look comparatively cheap on the hoof may become more costly when they get on the rail. The dressing per cent and the quality of the beef are both factors that have to govern, and as they pan out that determines the success of a buyer. [fol. 1384] The way the cattle have been handled and fed, as well as their natural quality, affects the dressing percentage and quality of beef.

I have heard Mr. Kinzer's and Mr. Fielding's testimony. I was one of the committee which prepared the proposed exhibit 204 and appraised the fair compensation with respect to the year 1931 of these owners of commission businesses at Kansas City. I was personally acquainted with some of the men whose compensation I estimated and determined. I have seen many of these men many times in the course of the actual performance of their respective duties at the Kansas City stockyards. I gave the committee the benefit of my acquaintance and knowledge of the men whom I knew with respect to their relative ability.

All salesmen and buyers are not alike in their capacity and in their ability. There is a great deal of difference in men in the stockyard game. I agree with the statements made by Mr. Kinzer and Mr. Fielding concerning the methods pursued and the factors considered in arriving at the judgments expressed in this proposed exhibit 204 as to the fair compensation of these individuals. I utilized the benefit of my years of experience on the yards in making this appraisal. I consider the amounts expressed as representative of a fair compensation for the year 1931 to these men for their personal services, time, and effort devoted to their business.

As to John Clay, F. H. Connor, and Alan Wilson, we considered only that proportion of their time which they [fol. 1385] devoted to this particular business. As to the others, we arrived at our conclusion on the basis that they rendered a full year's service in the business.

Cross-examination:

I am not now actively engaged in business. I ceased to be Armour's head cattle buyer ten years ago. During those ten years I have not been engaged in any business on the Kansas City stockyards. In the course of working up to head buyer I bought all classes and grades of cattle that Armour & Company handled. When I first started to work, I worked down in the hogs yards, and bought hogs. Then they put me over in the cattle yards, and I went to buying calves. I bought sheep for them at different times when their men were gone. It has been 30 years since I bought hogs. When I was with Armour & Company they did not buy the class of cattle known as stockers and feeders. They bought only cattle for killing purposes. That would com-

prise calves, butcher cattle, and fat cattle. I bought cattle at Pittsburgh, Chicago, Omaha, Denver, Fort Worth, Kansas City, and St. Louis. In a way, it was more difficult to buy cattle here at Kansas City than on the other markets. They get a great many more different cattle here than they do at the other markets. They get cattle from Mexico, New Mexico, and all through the West, and they are different grades of cattle. This market is just a little worse in that respect than St. Louis, but not much. They get a few more further-west cattle here than they do at St. Louis, but St. Louis gets a good many cattle from the South [fol. 1386] and Texas and all through that country.

When I worked for Armour & Company as head cattle buyer I did not to any great extent pass on the employment and the discharge of cattle buyers who were under me. They generally talked it over with me, but they did their own firing from the house. I did not do the hiring and the firing. I never had any experience in the selling of livestock on a public stockyards. I was consulted by other officials as to the employment or the discharge of cattle buyers. In giving my advice and counsel on the matter of employment, I took into consideration the ability a man had, his personality, and the experience he had in the business. By "ability" I mean the ability to handle the particular job that I had for him. If I were employing a butcher-cattle buyer, I based my judgment on his ability to buy cattle and not on some other line of work. By ability to buy cattle, I mean that he was competent in getting the cattle that would kill out as Armour & Company wanted them to and getting them at the right prices. Another qualification would be that he could do a reasonable amount of buying. As to whether I would give more value to an active man than to a slow man would depend on the results of his work. A slow man might buy his cattle just as good as the fast man, and he might buy them just as good or better. They may overlook a good many bets when they are so active. You have to weigh the thing a little before you make your decision.

[fol. 1387] Armour had nine cattle buyers altogether in my department when I resigned. I followed the same method in making the appraisal of the value of the services of the men named in respondents' exhibit 204 as described by Mr. Kinzer in his testimony. I took into consideration

the same things that he stated he took into consideration. I was not personally acquainted with all of the men whose services were appraised. As to those whom I did not know, I accepted the judgment of the other men of the committee who knew them. My estimate of the value of the services of the men whom I knew depended on my own personal knowledge of them, plus what information was given on those sheets that are now in this exhibit 204. My estimate of the value of their services was based on an appraisal of all of their qualities which I regarded as helpful to the businesses in which they were engaged. I considered their personalities, honesty, integrity, length of service, general reputation, ability as managers of their business, ability to attract and hold business to their respective firms, ability to sell livestock, and so on. Their abilities vary in respect to all of their activities. I took into consideration that one man might be a very good salesman, but a poor manager, and might not have the personality that attracts people, and vice versa. Where we valued one man higher than another, I don't know that necessarily he could get better prices, but he could demand more trade, and he had a different personality. This was my first experience as a member of a committee to appraise the value of the services of people.

[fol. 1388] Redirect examination:

It is my judgment that the ability of a buyer and the ability of a salesman expresses itself in the long run in the result that either buyer or salesman procures for those whom he serves and who employ him.

(Whereupon, the witness was excused.)

Mr. C. B. Grant, a witness called by the respondents, after being sworn, testified in substance as follows:

Direct examination:

I have lived in Kansas City since 1881, and was formerly employed by Armour & Company and before that by the Fowler Packing Company. I started at the bottom and worked up to buyer. My employment with Fowler and Armour combined covers a period of 40 years. My father worked for Fowler in Chicago and I went to work with

him there at the stockyards. When they sent him to Atchison to their packing house there I started in there. Then we came to Kansas City and they put me over here in the stockyards watching the dock. Finally they made me a buyer. Ten years ago I went on a pension with Armour. For a while I was their head hog buyer at Kansas City. I think it requires skill, judgment, and experience to buy hogs. It is possible to have hogs look pretty cheap when you buy them. They look all right on paper according to the cost, but after they are killed you know more about them. Your hogs might cost five or ten cents more than the other fellows, but when they get over to the packing [fol. 1389] house and are killed they probably would be cheaper on account of the yield. Anybody can buy hogs. You might say the same way with cattle, but I don't know how long they would last. There are times when we have to go pretty fast or somebody will get them away from us. That was during the War. The buyer might overlook something if he would go too fast. He might get some sick hogs or soft hogs, and there are lots of things that he might get. The Government catches the sick hogs now, but in the early days we did not have any Government inspection. We might overlook a load of hogs that was either soft or sick or had the cholera or something of that kind.

Soft hogs are from the South and are fed on acorns or soy-beans. When you put them in the chill room they won't chill. They are just like a dish rag hanging up there, and the oil runs out of them.

When I worked for Armour, it was my observation that the ability of the buyers varied according to their experience and natural aptitude for the work. That ability expresses itself not so much in the rapidity of their work as in the livestock they procure. I have heard the testimony of Mr. Kinzer, Mr. Fielding and Mr. Fletcher who, on September 28 last, met at the Live Stock Exchange Building to fix and determine the amounts set out as representative of what would be a fair and reasonable annual compensation for the year 1931 for certain of the owners of commission business at Kansas City. The amounts set out on [fol. 1390] the respective pages of that exhibit, from the information which I have and which came to me in the course of my work with these gentlemen, I consider a fair estimate of a reasonable compensation to the men there named for the year 1931.

I was acquainted with quite a large number of the individuals. The other members of the committee knew a lot more than I did, and I took their judgment on a lot of them that I did not know. There is a lot of difference as to their relative ability. There is a lot of difference between most salesmen. Just as much difference as there is among the buyers in their ability and in the results they are able to secure. I know some of those fellows never do quit work. They work after they get home, using the telephone to get business. It is not just the work they do down there in the yards by a long shot, but a lot of them work all the time to get business and to serve their customers generally. I know Ed. Blomquist. He worked for us over at the Mistletoe. He started in at Fowler's as a telephone boy. He is a very hard worker. In making up our appraisal and arriving at our judgments, I considered the energy of these men and their activity. I considered their ability to work and willingness to work to get business. Mr. Blomquist is a good judge of hogs and a competent salesman. I knew Mr. Garrison that worked here for the Farmers Union. He was a competent salesman-and was of value to the firm he worked for. There is a wide difference between the value of the different men as salesmen whom I observe [fol. 1391] working at the yards.

A man such as Garrison or Blomquist might be worth many times the amount per year to a market agency and to the customers of that market agency than a man similarly equipped would be worth. If their business shows they are business getters and they get a lot of hogs. There are differences between salesmen such as Garrison and Blomquist in the way they handle hogs on the market, than other salesmen. They know the game and they know the hogs. As a buyer I like to buy them as cheap as I can, and my success depends on that. To the best of my ability I expressed these relative differences in this appraisal and tried to arrive at a result that would be reasonable.

Cross-examination:

This is my first experience as a member of a committee to appraise the value of people's services. I never acted alone as an appraiser of the value of the personal services of anyone before this instance. I hire a good many people now, but I am not in the stockyards business. Since I left

Armour and Company ten years ago I have fed a lot of hogs. I am not feeding hogs now. It has been five years since I did. I do not have any connection with the marketing of livestock at the Kansas City stockyards. By "watching dock," I mean the shrinking of hogs, such as stags and sows.

Like the other members of the committee who have testified, I knew some but not all of the men whose names appear in this proposed Respondent's Exhibit 204. I passed judg- [fol. 1392] ment on those whom I knew and relied upon other members of the committee with respect to those I did not know. With respect to those I did know, I considered the same factors and generally made my appraisal along the same lines that the other three gentlemen have.

When the committee met we read over the instructions. I do not remember just how soon afterwards we started to make our appraisal. We took each man separate. We went down the list. The men whom the committee appraised vary in all the many respects as to personality and ability to get and hold business, ability to manage their business and ability to sell livestock or buy livestock. One man may be good in one respect and not so good in another, and vice versa. I took all of those things into consideration.

As a buyer, it was my experience that on some occasions I thought I got the better of a commission man in a trade, and there were other occasions where I felt sure they got the better. There were a few of them here that for a long time would not buy the Farmers Union stuff and we used to lay pretty close to them every day, and I bought their hogs pretty near every day. The bulk of them are pretty tough nuts and hard to trade with.

It is not just the work that the commission man does on the stockyards. They have done a lot of work, while we were at home. They could leave here Friday night or Saturday night and go out into the country and see these people.

There is a lot of difference in men's judgment of doing [fol. 1393] business down there. I know there are lots of difference in salesmen. We would go with some men and we knew their traits. We knew when they were weak and when they were going to sell them to us. The reason we had an advantage in buying the Farmers Union hogs, as

I described, was because they did not have a free and open market on which to sell their hogs. When they had the same opportunity that other commission firms had to sell their hogs, they sold them all right. The transaction in which I bought 3,600 hogs from the Farmers Union was over ten years ago. They have since got a new salesman by the name of Garrison, and he is not any such a man as they had then.

The commission houses know what the different fellows want. A salesman may have fifteen or twenty cars of hogs. He might have two or three cars that he knew would suit some St. Louis man or some shipper and he probably would not show those hogs to the packer buyers. He would go and get an order buyer and sell him three or four loads and sell somebody else three or four loads of that kind of hogs. Some packing houses will not buy any rough stuff. There is a lot of fellows that want a load or two of that kind of hogs to cut their prices down so they will show up good for the packing houses. A buyer may be afraid of his job or something of that kind and doesn't want to go to the packing house with his hogs costing away up above everybody else's.

Mr. Garrison was regarded as a very good hog salesman, but I think he was handicapped some on account of being [fol. 1394] with the Farmers Union. The Farmers Union was not very popular.

As to C. E. Blomquist, whose services the committee appraised at $10,000.00, I would say he gets out and gets the business. I think a firm could afford to pay him that if he could get out and get enough business to make that salary. I think he gets the business. It probably would not be very advantageous to a country bank to employ as its manager the president of the National City Bank in New York. Regardless of a man's ability, there must be some relationship between the salary he would receive and what the business can afford to pay him. I do not know John Clay, Alan Wilson, and F. H. Connor well enough to pass on what they should receive.

Redirect examination:

The Farmers Union was not a member of the Exchange clearing house. I do not know what the conditions have been since it was able to clear its transactions in the ordi-

nary way. At that time Armour and Company and the other packer-buyers did utilize the clearing house, as to stuff, except the Farmers Union. The salesman which the Farmers Union had in those days was not as good a man as "Snapper" Garrison in my judgment. He was not as resourceful in getting prices for his hogs.

(Whereupon, the witness was excused.)

[fol. 1395] Mr. Samuel R. Trower, a witness called by the respondents, after being sworn, testified in substance as follows:

Direct examination:

I have lived in Kansas City, Kansas, since 1887, and was formerly engaged in the livestock commission business at Kansas City. I think I was in the business about 43 years and quit about three years ago. I have not had any connection with the yards since I quit. In the course of my experience at the stockyards I became acquainted with the other owners of commission agencies there. That acquaintance extended back in most instances over the full period of my connection at the market. There is a difference in respect to the relative ability of men in the livestock commission business, as in other lines of business. Some men are better judges of livestock than others; some are more energetic than others and have a larger acquaintance. Some men are better salesmen of livestock than others.

I met on the 28th of September, 1932, with Mr. Kinzer, Mr. Hill, Mr. Fielding, Mr. Fletcher, Mr. Grant, and Mr. McLucas, at the livestock exchange building, and remained there from ten o'clock in the morning until five o'clock in the afternoon. I believe that the instructions on the first and second pages of respondents' proposed exhibit 204 were read at the outset of our work. We followed those instructions. The results in my judgment express accurately a fair annual compensation as to each one of these men as applied to the year 1931. In arriving at those results I took into consideration the relative ability, industry, in-
[fol. 1396] tegrity, experience, personality, and the nature of the duties performed by these different individuals. I

was personally acquainted with very nearly all of them. I never had any acquaintance with John Clay. I know all of the employees in the Kansas City stockyards, and I am well acquainted with them, but I have never met John Clay, Alan Wilson, or F. H. Connor. I knew of their connection with that agency.

In connection with the amounts here stated as representative of services on an annual basis as to John Clay, Alan Wilson, and F. H. Connor, I considered the agency here separately from their other agencies. I was basing my judgment as to the time that they would devote to this business on the other individuals whom we took in on the basis of a full year's work. These men were considered separately by the committee, and all the committee acted in connection with each one. I gave my opinion as to the relative ability as far as I knew it of the men as we came to them. The other members of the committee did the same when they knew them. We arrived at the conclusions expressed here on these several sparate sheets.

In employing a cattle salesman we usually consider his selling ability and also the amount of business and the amount of following that he has. That following will only come through long experience on the market and acquaintance in the country, and will reflect his ability to sell the cattle properly. If a man renders his customers good serv- [fol. 1397] ice through long years on the market, ordinarily he will have a greater following. I considered it in that light.

I have sold cattle all the time since I have been in the yards. It has been my observation that men started in as yardmen and worked up very often as calf salesmen, butcher salesmen, stocker and feeder salesmen, and fat-cattle salesmen. That was the course of my experience. When I first came here I went to selling butcher stuff. My father was selling the fat cattle at that time. He died about seven or eight years afterwards, and I sold fat cattle the balance of the time that I have been in the stockyards. A successful commission man should be well qualified to do most any part in the business. He should be qualified to get the full market value of the stock consigned to him. The best of them are liable to make a mistake sometimes in selling cattle. On the general average, the man generally gets the value of his stuff. I would not think it possible

for a man not experienced to go out and get the market value for a lot of cattle. There are several different things for a man to consider in selling cattle. You have got to know the buyers, and the class of cattle each one of them buys. When I first came to the stockyards they just had two buyers for each packing house, a butcher buyer and a steer buyer. They have them divided up now in divisions, steer buyers in different divisions. They operate on more specific orders now *and* they did when I quit.

I have sold a string of cattle amounting to almost a train-[fol. 1398] load to one buyer as one lot. That condition did not obtain when I quit working down there three years ago. There are very few shipped that way. They used to ship them in train-loads, but of late years they don't ship so many cattle, especially fat cattle. They ship stocker and feeder cattle in train-load lots sometimes now, but they very seldom ever ship more than four or five carloads of fat cattle at a time.

My son and I have a farm which he is operating now. We are handling cattle and hogs out there. At the present time they have to sort these cattle greater than they did, before they are sold. In years gone by, the buyers would buy pretty nearly any class of cattle. A great many of these loads of cattle come in here with different weights and quality that have to be sorted and sold and weighed separately to different buyers.

I have been acquainted with Mr. Fletcher ever since I have been at the yards. I also knew Mr. Grant and Mr. Hill; I did not know Mr. Fielding. The committee was in continuous session practically, except for lunch, during the entire day on September 28. We continued right on with our work between the hours of ten o'clock in the morning and five o'clock in the afternoon.

When we went to the country to solicit business we were always asked what we thought the cattle would bring on the market. Quite often we got requests to come to the country for appraisal work. When it was convenient to go I [fol. 1399] nearly always went. I became acquainted with the conditions that surrounded the feeding of the cattle. Generally I advised my customers as to when to market their cattle. Sometimes that advice was of advantage to my customer and sometimes it was not. Sometimes I was wrong.

In my judgment, these amounts expressed in proposed exhibit 204, on the bottom line, are representative of a reasonable and fair compensation to these men for the year 1931. I heard the testimony of Mr. Kinzer, Mr. Fielding, Mr. Grant and Mr. Fletcher. I agree with their testimony with respect to the factors which were given consideration in arriving at these amounts.

Cross-examination:

We handle a few cattle out on the farm, and that is all the business I have been connected with since I gave up business at the yards. There were a few of them whose services our committee appraised that I was not personally acquainted with. Probably there were some others besides John Clay, Alan Wilson and Mr. Connor. I do not know how many of the committee were acquainted with those three men. I do not know how much time they devoted to this Kansas City branch of their business. I don't know whether they come here or not. I made my part of this appraisal in the same way as described by Mr. Kinzer, Mr. Fielding, Mr. Fletcher and Mr. Grant as to the way they made their part. I took into consideration the same factors which I heard them describe that they took into consideration. The personality of a man in the commission business, his ability to make friends, his ability to go out in the country and meet people and please them and cause them to [fol. 1400] ship livestock into the stockyards, and to meet them when they come to the stockyards, and make friends with them, are very valuable features to one in the livestock commission business. The acquaintance a man has, the successful way he has of handling the business and handling shippers is what makes him valuable. When I was in the commission business and was employing a salesman I gave considerable thought to the following that a saleman had and the business he could bring to my firm.

In making this appraisal I gave considerable weight to their qualities along those lines.

(Whereupon, the witness was excused.)

Mr. Ernest C. Hill, a witness called by the respondents, after being sworn, testified in substance as follows:

Direct examination:

I was formerly employed by Wilson & Company. I was with the company 34 years, as cattle buyer most of the time. I began as cattle feeder in 1898 over at Schwartzchilds & Sulzberger's plant. I worked over there for $50 a month for a couple of years and came over to the yards and worked up to cattle buyer. I followed the buyers around, taking the number of cattle and the kind they bought. I commenced as a butcher buyer, buying cows, heifers, and light stock. Then I got to be a steer buyer, and then head steer buyer. I have followed the general and usual course of advancing. I was head steer buyer about [fol. 1401] seven years, coming here from Chicago. Schwartzchilds and Sulzberger owned and operated the present Wilson plant. I began buying cattle in 1903. Mr. Wilson bought it about 1915 or 1916. I was buying butcher stuff and went to Chicago in 1912, coming back here about nine years ago. From 1912 to 1924 I was in Chicago. During the last seven years I was head fat-steer buyer here at Kansas City. Those duties required my presence on the yards every market day. Monday and Tuesday are the largest days. I came in contact during this period pretty generally with the salesmen of cattle at the Kansas City market, and with the owners of market agencies operating there. I bought cattle from all the market agencies which had the cattle that I wanted and best suited my orders. I tried to buy them as cheap as I could.

I noted a change in the methods that buyers followed in this period from 1903 on. They seem to be more particular about the kind nowadays. During the latter period of my employment the orders required a closer grading and sorting to fulfill the requirements. The orders were more specific in character as received by the buyer as to weight, quality, and number of cattle purchased. As a buyer I tried to carry out as best I could the order as to quality and quantity and to get the cattle of that particular quality as cheaply as I could on the market.

I remember the occasion on which a group of gentlemen met at the Kansas City Livestock Exchange Building on September 28 and collaborated in the preparation of pro- [fol. 1402] posed respondents' exhibit 204. We met at ten o'clock in the morning there in the exchange building. We

continued to work on the so-called appraisal until about five o'clock in the afternoon.

The instructions appearing on page three of this proposed exhibit were read to us when we started to work or we read them ourselves. In arriving at our conclusions we followed them as best we could. We received a statement of appraised amounts relating to some of these individuals as representative of fair compensation fixed by another similar committee as applied to the year 1929. Personally, I knew many of the individuals whose names appeared on those sheets. Some of them had been known to me there on the market for years and I had come in contact with them in the actual performance of their work. I have been on the other side of the fence from them when they were trying to sell them as high as they could and I was trying to buy them as cheap as I could. I gave the committee the benefit of my knowledge and acquaintanceship with the men as to their relative ability in my opinion. I have formed my conclusion as to the capacity of the men in general. I think the amount set out on each of these sheets represents the fair and reasonable compensation to the individual according to his relative ability for the year 1931. I was looking at the problem in the light of general conditions as they existed in the year 1931. I did the best I could to determine accurately and appraise each individual as to what he should be fairly entitled to in the way of compensation for a year's services in that year.

[fol. 1403] I have met Mr. Clay of John Clay and Company. To my knowledge he has never sold cattle on the yards. I know Mr. Wilson and Mr. Connor and I know their standing in the livestock industry. In placing $6,000.00 as the amount for the value of the services of John Clay, $2,000.00 for Alan Wilson, and $2,000.00 for F. H. Connor, I appraised the value of the time which they devoted to the Kansas City business.

In the case of the others, I took them on the basis of a full year's time. There are a good many cattle sold at Kansas City that are sort of on the gambling order. The fed cattle are less uniform in quality at Kansas City. I don't know why it is.

The character of feed used in fattening cattle affects the quality of the beef and the dressing per cent. It is up to salesmen, as well as the buyer, to watch out for those

differences. It makes the buyer's work a little harder. I was acquainted with Arthur Fielding, one of the members of this committee. I have seen the cattle fed by him frequently in the course of my experience as a buyer here on the market. For years he has been an extensive cattle feeder. He is a good feeder and produces a very good quality.

I have seen him here on the market frequently when his cattle were being offered for sale.

Cross-examination:

I did not hear the testimony of Mr. Kinzer and the other [fol. 1404] members of the committee who testified last week.

I was head buyer for Wilson and Company in the year 1931. That company had seven cattle buyers at Kansas City in that year, three of whom were steer buyers.

There were four butcher cattle buyers. They also had a calf buyer and an assistant. In 1931 Wilson and Company bought a few cattle at Omaha.

When our committee met to appraise these gentlemens' values, we were handed the sheets that made up Respondents' Exhibit No. 204. The committee did not add any names or take away any names. The committee had a similar appraisal covering the year 1929 for such use as it chose to make of it. We made an independent appraisal. I know practically all the people that the committee appraised. I don't believe there were any that I did not know. The information which I had about the men whose names were on those sheets was what I knew about them myself and what is stated on each sheet about each individual man. I saw John Clay myself on the Kansas City stockyards during the year 1931.

It was during the cattle show. I don't believe I saw him here more than once during the year. I do not know whether he did any work in his branch office at Kansas City during that year. I saw Alan Wilson here several times during the year 1931, but I do not know whether he did any work in the office. I did not see F. H. Connor during 1931. I could not answer the question as to how many hours or days they give to the business here in Kansas [fol. 1405] City.

The factors which I gave consideration in making up my

mind as to values in this appraisal were the business they did. I took into consideration their personalities, their ability to make friendly contacts, draw business to their firms, manage their firms well, and their ability to sell livestock. Some of these men are worth more than others. The fact that one gets more than another does not mean that the higher valued man can sell cattle better, or get more money for the cattle he sells. They are more valuable to the business. Those differences center largely around the ability of the men to draw business to the firm. I have bought cattle at Chicago, Oklahoma City, Fort Worth, and Buffalo. I do not think I have found it more difficult to buy cattle at Kansas City than at any of those other stockyards.

(Whereupon, the witness was excused.)

[fol. 1406] Mr. James B. Wallace, a witness called by the respondents, after being sworn, testified in substance as follows:

Direct examination:

I am an insurance agent and have been in business in Kansas City, Missouri, since 1901. I testified in the former hearing in connection with this proceeding. I testified at that time as to the rates then in effect by fire insurance companies generally writing fire insurance upon furniture and fixtures. Since 1929 there has been an increase in those fire insurance rates.

There was a flat increase in rates of 16⅔ per cent charged on the property in Missouri, both personal and buildings and that is being charged now. The matter is being handled in the Federal Court and a part of the premium is being impounded in the Federal Court pending a final decision of the Federal Court on the justification of that increase. The right of insurance companies to increase the rates is a subject of litigation. They are collecting the increased rate and impounding the 16⅔ per cent on the total premium. I believe it was in 1929 that we had undertaken to write a reduction in the rate of 10 per cent below the published rate.

It was found that we would have to charge a 5 per cent increase, so that is where we get the 16⅔ per cent increase in the rates. So from a practical standpoint there is a 16⅔ per cent increase over the rate that I gave in 1929 over the testimony in this proceeding.

At the last hearing I testified that as agent I wrote on [fol. 1407] behalf of the company, which I represented, practically all the surety bonds given by these respondents to the Secretary of Agriculture and filed with the Exchange, having to do with the integrity of their market operations. I still continue as agent, to handle the bulk of that business. As agent representing the New Amsterdam Casualty Company, I write most of the surety bonds that are executed annually by the respondent members of the Live Stock Exchange.

The fact that Exchange Memberships depreciated in value from $2,080.00 each in 1929 to $1,800.00 per membership at the present time has been a matter of deep concern to my company in the writing of these surety bonds. I might say that we look upon the membership dues as of greater value than we do the dollars and cents. We feel that the membership entails a cooperation that we will need at all times and especially if there is a breach made under the bond that is most valuable to us. We are still charging the rate of $3.00 per thousand that we made in the beginning in 1919. If the memberships in the Exchange had no value, I don't believe I could induce the company to write their business at $3.00 any longer for the reason that the tariff promulgated by the Towner Rating Bureau has established a rate for livestock bonds generally, at the markets, of $10.00 a thousand, and with further impairment of the memberships to that extent, I believe it would be useless for me to argue with my company, although I believe that they would consider my advice.

The increase in the rate of Fidelity bonds has been from [fol. 1408] 10 to 50 per cent. The 10 per cent is applicable on the bonds at the stockyards. That increase went into effect on November 12, 1931.

The bonds down there at the stockyards range from $5,000.00 to $20,000.00 per employee. A $10,000.00 bond would be raised to $55.00 instead of $50.00. The 10 per cent applied regardless of the amount of the bonds. The rate was increased from $5.00 to $5.50 a thousand. Where there

is a schedule of bonds for several employees running up to $100,000.00 for a firm, they are entitled to a lower rate than a firm who had one employee at $5,000.00. The 10 per cent increase would apply to all of them.

There have been two or three increases in public liability insurance or workmen's compensation insurance. There is pending now an increase of at least 20 or 25 per cent that is liable to be made effective at any time.

(Whereupon the witness was temporarily excused.)

MR. W. M. LIGGETT, a witness called by the respondent, after being sworn, testified in substance as follows:

Direct examination:

I live in Kansas City, Kansas, and operate a market agency at the Kansas City stockyards under the name of the Kansas City Livestock Commission Company. I am the sole owner of that business.

[fol. 1409] I have been operating a market agency or connected with the commission business about thirty years. I testified at the former hearing. The conditions which have confronted me in the operation of my business have become more difficult in the last year. There have been increases in some of my expenses, such as postage, telephone, telegraph, and tax on checks.

In the operation of my business, in 1931, I endeavored to keep expenses as low as I considered it advisable. I was careful and could not afford to be otherwise. I believe that the expenditures which we made for the purposes indicated on Government Exhibit 114-20 were reasonable in amount and necessary. We spend very little for newspaper advertising. The big part of the item of advertising shown on the exhibit would be chargeable to market letters and personal letters, general advertising and keeping our customers posted on the market. We get letters and requests every week, sometimes several requests a week to send salesmen out to inspect cattle and pass upon what the cattle would bring on the market. I keep in pretty close contact with my established customers. A commission firm would be taking a risk in selling a bunch of cattle for a man that he did not

know and did not know his financial standing. There might be a mortgage on them and he might send the money to the wrong place. We make it a part of our business to know these men and know that the cattle really belong to him, and know where the proceeds should go. If we go out and visit [fol. 1410] him, we usually get those details in addition to being a help to him in placing a value on his cattle. In the practical operation of my business, it is of advantage to know, not only the financial situation with respect to the ownership and the possibility of a lien upon the cattle, but also as to the pasture leases. We have to take all those things into consideration to protect him against loss in the remittance of proceeds. In connection with our trips to the country, either my employees or I not only appraise the cattle and know how they are fed and pastured, but we get this other information. Customers desire information by market letter from us wherever they have livestock on hand that is soon to be marketed. In addition to sending them market letters, they want me to write a personal letter once a week and keep them closely posted on these cattle and any variation in the market. From this information he ships the cattle, and he will then call us up before he ships them and asks us what they will bring on the market. We have a great many calls of that kind. The fact we have seen the cattle or a salesman has seen the cattle in the country before they come to market is helpful in the actual sale of the cattle on the market. Hardly a day passes that I do not show a bunch of beef cattle to a packer and invariably he will ask me how the cattle have been handled. If I have been out to the country and seen them handled I can give him a straight answer. I can tell him whether they are grass cattle or cake fed cattle or been fed cornmeal and how long they have been fed. That very often is quite a help in making the sale. It is important that I as a salesman of those [fol. 1411] cattle be able to give accurate and truthful information to the buyer if I am to hold his confidence. We did very little advertising in the paper in the year 1931. Possibly it would amount to 5% of the item classed as advertising in the audit of my business. We run a little weekly item in the Drovers Telegram. It possibly costs $5.00 a week. I think $100.00 a year would cover the entire amount spent in advertising in periodicals and daily publications. I would say that 15 to 20% of the item of traveling

expense would be chargeable to getting new business and the balance to the regular trade that we do business with, that is, the people who ask us to come out and look after their cattle and make estimates for them. I have an automobile of my own which I use in the business although my expenses incident to the operation of the automobile is listed neither in the audit or the cost study for my firm. We charge to traveling expenses just the expense of gas and oil. The amount for gas and oil is probably included in the $1600.00 item of traveling expenses. The time that I spend in the country is confined mostly to the latter days of the week when business is light on the market. I am never away on Mondays and Tuesdays. A salesman never goes out in the fore part of the week. He is needed on the market on Monday and Tuesday and usually on Wednesday. If all the salesmen in my firm including myself remained in Kansas City the full week I would not be able in the practical management of my business to reduce my salary account. I do not think that a distribution showing that [fol. 1412] I spend 33 1/10 per cent of my total revenue in the service of business getting and maintaining would be an accurate reflection of what transpires in my business.

Cross-examination:

I believe we have been called on to make more country trips than we ever did in any period before this. Our expense has been heavier although we have reduced expenses in salaries. We have cut them to the bone. I think my expenses are as great as they were in 1929. It has taken a great deal more time and effort in handling the stuff this past year. The market is gradually going down. It seems to me we are having the lowest prices we have had in years in cattle, horses, hogs and sheep, and they are harder to sell. It is harder to satisfy the trade and it takes more time and effort. That is because on a declining market we hold out longer before we will sell. In our case these country trips are more frequent than they used to be. This is because the price is very low and the stock is losing money. A big percentage of these people will not ship their cattle unless a salesman will go out and invoice them on what he thinks they will bring. We do not answer these requests in all cases. An old gentleman down here who had one load of cattle has been in our alley four different

times asking me to come down or send a salesman down to pass on his load of cattle. He told me there had been two other commission firms who had passed on them and I just took the stand that I did not need to incur that expense to [fol. 1413] go and inspect cattle that had already been inspected. Those other firms were firms on this market. I do not often find where another firm will inspect the cattle. It does happen that several firms will inspect the same bunch of cattle. I do not think I ever turned a man down because he had a small bunch of stuff, if I thought he was really in need of advice and I could be of help to him. I do not always get the shipments when I go out and appraise them. On the trip that I just got in from I inspected quite a number of stuff on request and that stuff is in the Chicago market today. The making of these trips is rather an expensive proposition. Most of this inspection work is confined to cattle. I suppose there are cases where sheep salesmen would inspect sheep. I would say 85% of the cattle coming to my firm is inspected by me or some member of my firm before it reaches the market. I have a man that travels in the Southwest. He usually goes down there and leaves the car, and works among those people and helps them sort and classify their cattle. He usually comes in with the cattle. He is not a salesman. He buys some cattle when he is here on order. I expect he spends more of his time in the country than all the others put together. He is listed as a feeder buyer and of course he solicits business. If we were to curtail these trips to the country I presume a big part of our established trade would keep coming to our firm at least, but they would finally possibly drift away for the [fol. 1414] reason that we had not given them the service they were entitled to. If a man would write me and ask me to come and look at his cattle and I did not come he would think I was not very courteous and the chances are he would finally drift away to some other firm. The only thing in the way of a decrease in my expenses of operation is that I have cut salaries the first of the year and then I cut them again the first of May. I cut $50 a month on two different men on the first of the year and on the first of May I cut another $25 on a part of them. It would be possible to get along with $1,700 cash working capital if we wanted to jeopardize our business.

We do not overdraw our account in paying our regular

expenses. We do not overdraw except in the purchases of cattle. We start with a regular amount of capital in the bank, but we do not always keep it there. We keep between $4,000 and $5,000 in the business. My business lost money for seven months in succession this year, and that took it down from $100 to $700 a month. That is not unusual. My firm receives the bulk of its receipts in the fall of the year. I have had the experience when the income was sufficient each month to meet my expenses. General expenses were less for one thing, and we had a bigger volume of business, and the volume of business was more steady. I have two other salesmen in my firm besides myself. I sell the beef steers, the heavy feeders, and the stockers. I have a salesman that specializes in the butcher stuff, cows, heifers, and calves. I have another man who, during the busy days of [fol. 1415], the week, assists us both in selling odd cattle.

A week ago Monday our firm had 24 loads of calves, yearlings and cows from Oklahoma, Texas and New Mexico. There was only one owned with the cattle. They wrote us about the cattle and gave us instructions where Mr. Rodgers did not give us instructions. I have another case in mind where we had four loads of cattle from New Mexico and 19 owners, and nobody in charge of those cattle. We had to classify the cattle, sort them for brands, for age, size, and flesh, sell the stuff, and send these 19 owners the proceeds out of that four loads of cattle. That was two weeks ago Monday.

Redirect examination:

If instead of handling the business in these peaks of volume on Mondays and Tuesdays, and in greater volume in the fall than in the other seasons of the year, the business spread itself out evenly throughout the year, we could handle it easier and with less help.

From time to time I have owned and marketed cattle. I am now in the cattle business.

Recross-examination:

I am still interested in a ranch. I do not devote any time to its operation, except that I go out there possibly two or three times a year. I do not give any of my time to the management. My son runs the place, and he consults me about selling or buying cattle for the ranch.

(Whereupon the witness was excused.)

[fol. 1416] Mr. Walter S. McLucas, a witness called by the respondents, after being sworn, testified in substance as follows:

Direct examination:

I am chairman of the board with the Commerce Trust Company in Kansas City, Missouri. I was engaged in the livestock commission business first in Omaha, Nebraska, in 1895. I was there about 18 months and then I re-engaged in business at St. Joseph, Missouri, continuing there until April, 1908. I have been in the banking business continuously since that time. I came with the Commerce Trust Company of Kansas City in 1915 and left in May, 1921, to become an offi-er in the National City Bank in New York. I returned to the Commerce Trust Company in Kansas City on November 1, 1922, where I have been since and am today. I am a member of the Federal Reserve Advisory Board representing this board in the Tenth Federal Reserve District. Since my active connection with the livestock commission business has been discontinued, I have kept generally advised as to the situation in respect to the livestock industry. I have owned farms. I am acquainted with some of the men engaged in the livestock commission business at Kansas City and St. Joseph. I met with the appraisal committee and participated in the preparation of proposed respondents' exhibit 204. We had before us, segregated as to the names of the concerns, the men whose services were under inquiry as we were advised, and we had statements of the volume of their business and the number of cars of [fol. 1417] each type of livestock handled and their relations with the concerns, whether cattle salesmen, hog salesmen, sheep salesmen, office men, or what not. I assume these are the identical sheets that we had before us. We had the report of a committee that I was advised had considered this matter as of a former date. In 1929 I think. We had on this committee, not including myself, men who knew most of these men in a personal way or knew about their work. I knew some of them, but not with the intimacy that these men who were formerly cattle buyers and acted in the business and cattle shippers. Some men knew every one, and most all of them knew many of these men whom I did not. The final opinion or final expression of what we were asked to do was compiled and agreed on unanimously

on the information before us. The final report which we signed expressed what was the conclusion arrived at generally in that way. I kept for my own self a little compilation that I followed through on it, which sets out those names. Several men did that and then it was expressed finally in this thing we signed and the plan was for Mr. Kinzer to initial it. Mr. Kinzer wrote in the amounts on these separate sheets appearing on this exhibit and initialed each sheet. I utilized the general knowledge possessed by myself and the other members of the conditions generally that prevailed in 1931 in respect to the value of services or compensation for services of this character as a factor or element in arriving at my final conclusion. I had a copy of the written outline of instructions at the outset of the work. [fol. 1418] Where I did not know an individual I personally relied on the information that came to me from other members of the committee who were acquainted with the individuals. I considered each man individually.

One major factor, as far as I am concerned, was that in 1931, with respect to the measure of all compensation, whether classified as to what would be the proper allotment to these men as owners, as compared with the employed people, or considering the employed people, the proper values under then conditions were substantially lower than they were in the previous report that we had before us. The changed conditions made that very apparent, and these reports have that factor in them. They are lower as to 1931 than they were in this report of 1929.

As to the competency of these men to sell livestock and so forth, I might have qualified as an expert in that once, but I wouldn't assume that I can now, because there was always the very vital question in the livestock commission business as to what was the value of men's services and what made men's services valuable. In the livestock commission business the elements of ability, integrity, energy, conduct, and all those questions operate in effect in getting at value. When I was active and there is now a great deal of difference in the value of men in that respect in whatever service they perform. Some salesmen are better salesmen than others. Some buyers are better buyers and so forth. Some are attractive to the patrons and attract [fol. 1419] business, not solely on their salesmanship ability, but on other elements and qualities. It all gets down

in the final estimate to the results realized from the man employed, whether his services produce gross returns out of which there is left a net, when the costs are taken out. That is a difficult question, because there are so many men doing many things that enter into the gross and into the final net. When I was active there was always competition for the man who did the job better than some other man. He was able to obtain compensation above another man because the estimate of him would be based on the theory of the net results. The question of compensation was always before the employed and the employer. I think that the employed always thought it was too low and the employer probably always thought it was too high, but I should say that the real test of it finally got to be what was the net result of a man's employment to determine what he was entitled to in the way of compensation. I believed when I was in business and I believe now that there is not only required a high degree of integrity and ability but that in my experience throughout the transactions were word of mouth transactions with no records. I have been told they have, in all the years, seldom any controversy where daily transactions were involved which were wholly word of mouth. I think that statement alone indicates that the men were possessed of high integrity in handling the patrons' business. In years of my observation and contact [fol. 1420] there were very few evidences of a departure from a faithful performance on the part of the salesmen and the commission men in serving their customers. It was my observation that men engaged in the business differed widely in their relative ability and energy just as they do in other businesses. That accounts for the fact that in this appraisal the fixed annual compensation varies from $1,500 in the case of one individual, to $25,000 a year for another individual. Personally, I know more about the $25,000 man than I do about the $1,500 man.

I believe that $25,000 was a fair appraisal of the compensation to him for the year 1931. That man was J. C. Swift. My records show $24,000.

We set the time of John Clay up on the theory of one-sixth of his time applied to Kansas City. I don't remember whether it was one-sixth or one-eighth, but as we worked it out it was greater than the amount that we set up for J. C. Swift.

As to all individuals except John Clay, Alan Wilson, and F. H. Connor, who lived in Chicago and who supervised the business of John Clay and Company at Kansas City, I put my appraisal on the basis of their rendering a total yearly service at the market. As to these three individuals connected with John Clay, we figured a fraction of their time as being devoted to the business. The total of John Clay's time on this basis would have run in excess of $24,000.00 a year. I am personally acquainted with Mr. Swift. In connection with him, I took into consideration all the [fol. 1421] factors that we took generally, the business done by his concern, and the knowledge of his part in producing that volume of business. He was in business when I was and I knew him then. I have seen more of him as an individual and heard more about him. If we were going into the commission business today, I would think J. C. Swift would be very valuable and would have the high priced talent that I would seek. He is a man that would be rather outstanding in any line of business in which he might engage. It was my conclusions that these amounts, that appear on these several sheets, of proposed Exhibit 204 are fairly representative of what would be a fair compensation on an annual basis to these men for the year 1931 with the exception made as to the three men mentioned. The appraisal given us did not control, but it was an element in the conclusion, because I knew intimately some of the men who made that appraisal. There are numerous variations in the two reports. There was no percentage reduction. Our report is an independent conclusion although the other report had a place in it. In my opinion a man would be very improvident to contemplate an investment in the livestock commission business on a theory that it would yield a net return of 6 per cent on the capital invested in fixed assets and from 7 to 8 per cent on the capital required to finance the general operation of the business. If the return were limited to the figures mentioned from a banker's standpoint a loan would not be made for one hundred per cent of the requirements in the business. In the livestock commission business you cannot segregate the net return as of 1931 [fol. 1422] as against 1932 or 1929. The livestock commission business has such peaks of volume depending on production.

Cross-examination:

I have read Mr. Kinzer's testimony in regard to the proposed Respondents' Exhibit No. 204. I read it in a hurried way. As to the factors which I took into consideration in fixing the values on these men's services, I think my experience is in accord with Mr. Kinzer's. I started in the commission business at $50.00 a month at the lowest job. I finally became a part owner and sold livestock.

My principal species was hogs. I bought cattle and sold cattle in a minor way. This is my first experience as a member of a committee in valuing the services of the people. The total knowledge and experience which I have to bring to such a problem as was presented to this committee has been gained in my business life. As a part owner of a livestock commission firm, it was one of my duties to pass upon the compensation to be paid to employees in various positions. My p[illegible] in banks has placed upon me similar duties with res[illegible]ect to employees of banks. In the commission business, when considering the salary which I would pay to employed salesmen, I took into consideration a man's qualifications for the job. If it was a salesman's job, I considered his ability as a salesman, the resulting productivity of the use of his services in the busi- [fol. 1423] ness realized for the concern, his ability to attract and produce patrons or consignments. That is a very important element as I recall it. Livestock salesmen, like other professional men, frequently have a personal following. As competitors we probably often thought that the man might have social and personal qualities that produced the patronage when he did not possess the essential qualifications of a good salesman or a salesman as good as ours might be. The social and personal qualities would be a very particular element in that man's relationship with his employer and would bring business to the concern. Sometimes the best salesman did not always have the productivity. I can remember individuals that I thought were attracting business not justified by their ability to serve the customer.

There was also the limit of bargaining that entered in, and I had to give considerable thought and weight to what a desirable salesman was willing to sell his services for. A competitive feature entered into it. By that I mean that

other commission firms might seek his services. I rather think that where services are bargained for under competition the figure arrived at would represent the fair market value of those services. It seems to me that that was the important feature. It all has to come back to the net, if I have to pay him more than the net justifies I could not continue it very long if I continued in business. I might desire a very fine salesman but find that his price was higher than the business could afford. Somebody else might be willing to pay it and I could not afford to pay it. [fol. 1424] I have had that experience. As to Mr. Storts, whose name appears on the third of these form sheets in Respondent's Exhibit 204 there was a good deal of discussion. I knew a lot about him as I was in St. Joseph when he was there. I had considerable personal knowledge about him as differentiating from other men here that I do not and have not known. There was discussion about him, he having formerly been a very active man engaged in selling and buying and having a large following of patronage. At his present age I asked about how active he is today as compared with his activity. He had all the factors mentioned on the sheet on which his name appears and we had more discussion about him than we had about any others. I had my own personal knowledge of him and a general knowledge.

We had the information on these sheets plus the information of the various members of the committee as to the individual man. The former report of the committee that appraised the services of these men for the year 1929 was also used, and we also called in Mr. Stebbins several times to answer specific questions. Those things constituted the information upon which the committee based their judgment. We did not have before us the audits made by the Government. I did not know personally a great number of people whom the committee appraised. As to those who were not personally known to me I relied upon what was told me by those who were acquainted with them. Many of these men were in business when I was, and many of them I [fol. 1425] knew. I did not have intimate knowledge of the details of their business of any of these men. We have some patronage of livestock commission firms in our uptown office, in our banking business.

I am personally acquainted with Mr. John Clay, but I am

not acquainted with Alan Wilson and F. H. Connor. I have not seen Mr. Clay for a number of years. The basis of apportioning one-sixth of John Clay's services to Kansas City was on the theory of the ratio of this business to the whole of their business. I think it was based on volume. I do not know the amount of time which John Clay or Mr. Wilson or Mr. Connor devote to the Kansas City branch. I cannot remember how that became the basis of our conclusion, but there was something stated to us that caused us to do that. The same theory as to the application of the time and services to the Kansas City business was made with respect to Alan Wilson and F. H. Connor. I think it was the volume theory that the Kansas City volume was one-sixth of the total volume of the business, and on the theory that John Clay devoted one-sixth of his twelve months to the application of the business. I don't know how much time he spent at Kansas City in that two months or how much time at Chicago and somewhere else. I don't know how that one-sixth got into it, but my memory is by volume theory. I know personally E. W. Elliott, President of the Exchange. I do not know Mrs. T. S. Moffett of the Moffett Commission Company. I know there were two Moffetts, but I could not say which one I knew. I remember vaguely that we discussed Mrs. Moffett, but I do not know what services she performed. I think she had a [fol. 1426] part in the office end of the business. The value of the $4,000 placed on the services of E. W. Elliott was based on the information that I have heretofore described. I have no individual information personally. As to the $6,000 value placed on the services of Mrs. Moffett I would not be in a position to explain why the difference. I do not know the effect upon the financial results from the operations of 1931 of the firm of Swift and Henry, as J. C. Swift drew out his salary of $24,000 that was not discussed in the committee. As to the difference between the two head men of firm 59, I thought about the productiveness in the getting of the business as the most important thing. That fellow is a business-getting and always has been. When I was a competitor with him I found that out and that is shown by these performance gross figures. I know that that is a big element in productiveness of business. By that I mean in getting business to the firm. As far as the actual buying and selling of livestock I don't know of any element that is

an important measure of that difference. I do not know how much time the $24,000 man and the $8,000 man spent in buying and selling, or what per cent of their time was spent in management or any of those things. My assumption would be that each spent all his time in the business. I never knew of J. C. Swift being engaged in the buying end at all, but I don't know whether he is or not. In considering the varying abilities of men and reflecting them in the varying values given, the varying abilities to get the best price for livestock they sold is a part of it. One would be a [fol. 1427] better salesman than another or one a better buyer than another, but that was only one of the factors. I think J. C. Swift is a man of exceptional executive ability.

(Whereupon the witness was excused.)

H. L. JARBOE, a witness called by the Respondents, after being sworn, testified in substance as follows:

Direct examination:

I live in Kansas City, Missouri, and am engaged in the banking business. I am president of the Drovers National Bank, which is located opposite the Livestock Exchange Building in the stockyards district. I have been president of that bank 21 years. A year before I came here I was in the National Stockyards Bank at National Stockyards, Illinois. I have been in contact, in one form or another, in business or otherwise, with the livestock industry all my life. The big end of our business is the livestock industry and the allied interests associated with the livestock industry. My bank makes lots of livestock loans. Our peak period is seasonal. We are at our peak period now at this time of the year. As these cattle and lambs get fat and come to market our loans go down. There is a movement twice a year, when that movement in the spring comes again we get what we term the grass cattle which are coming from the pastures out in Kansas. There are two distinct loans that we have. With us it was rather difficult to place livestock paper on secure loans on livestock during [fol. 1428] the past year or so. Two or three years ago we felt these cattle were too high and we got more particular with our loans and cut our advances down on them.

It was not the lack of funds, but we did not like the loans on the price the commodity was bringing. We have taken all the good loans we can get this fall. In the last six weeks we have written 2500 letters to country banks soliciting these feed loans. The change in policy is due to our judgment as to the condition in the livestock industry. When a commodity is cheap and nobody wants it that is the time to buy it and the time to loan money on it. When it is high and everybody wants it that is the time to sell, and do not loan money on it. We have virtually no slow or doubtful paper in our bank at the present time. I have had opportunities to observe almost continuously the operation by different commission firms at the Kansas City stockyards of their respective businesses. I am in contact with them every day. I think nearly all of them make a practice of going to the country, that is the progressive ones do. In that business we have men like any other business who are not progressive. They sit around and are what we call chair warmers. I believe the activities of these men in the country, as you have observed them, are helpful and even essential in maintaining the volume of business that is transacted in livestock at the market. A commission firm that is aggressive goes to the country and visits these different customers on their different farms [fol. 1429] and ranches. He knows how they are handling their cattle, makes comparison of the feeds, and observes how a man is feeding his cattle, if he is full-feeding, or if he is grazing how the pasture is, and how the cattle are doing. He can also see how that man is conducting his business and how he stands at home. When that man brings his cattle into the market, if the packer buyer goes out to buy those cattle he wants to know how those cattle have been handled and fed. I would say it would be very essential in the commission business for a man to make these trips to the country. The fact that the commission men are acquainted ordinarily with the cattle as they are in the country assists in the making of loans by our banks. Yesterday I had a loan come in and we did not know whether the man was asking us to loan too much money for his cattle. We went to the commission man and asked him about these cattle, the kind they were, the ages and conditions, and how he was figuring on handling them. This commission man had been at his place and knew all about it.

That was all of very material assistance to us in making that loan. There is hardly a day goes by that we do not go to the commission man to find out about the conditions surrounding a bunch of cattle or the condition of those cattle and how they are going to be handled, which renders us a service in making that loan. The fact that the commission man knows about conditions surrounding them and the quality and character of the cattle is helpful to the owners of the cattle as well as to ourselves and in turn it [fol. 1430] is help to this market as a whole from the standpoint that we are able to finance the transactions. Every deal we finance here helps this market to that extent and that helps to bring the business to this market. I am cognizant of the fact that commission firms selling livestock guarantee to the purchaser title to the livestock sold. That guarantee is of value to the one who loans money on the livestock when they are purchased on the market. If a bunch of cattle is purchased on the market we do not try to find out the source of the owner of those cattle because they guarantee to us that the title is good. We accept it and loan our money on those cattle accordingly. The hazard to the commission man would be very materially increased if they had no contact with their customers and with the consignors of livestock in the country, or of the financial situation of these various people who consign livestock to market. If they did not go to the country and be familiar with these deals they would not be in a position to handle that business intelligently and to the best advantage. If those men did not go to the country and do that work the market that did do it would gain over this market and this market would dry up and there would not be any market and we would lose our central market. The owners of livestock would suffer. They would be at the mercy of the buyer who might go out to the country where they would not have any competitive bids for their livestock. In my opinion the central market is very essential to the livestock [fol. 1431] industry and I believe it performs real service to the livestock producers. In saying that I have in mind all these so-called central markets.

I met with some other gentlemen in the Livestock Exchange Building on the 28th of September. At that time we had several sheets which now appear in Respondent's

Exhibit 204. I have not heard the testimony of the other witnesses. We were there from ten in the morning to five in the afternoon. We had a short sheet of instructions as to how we would proceed and we had individual sheets giving the names of the individual owners or part owners of commission agencies in the stockyards and the information contained thereon. We also had a list of the amounts representative of the fair compensation to some of these same men who had appraised them prepared by a similar committee that had to do with the conditions that appertain to the year 1929. We were considering the conditions of these various individuals that existed in 1931. We took the individual sheets one at a time and went over them and discussed them pro and con, as to the amount of business they were doing and the executive ability of the men we were considering, and the services they were rendering. We tried to arrive at what in our opinion that man would be worth from an unbiased standpoint. If he was an executive and was the manager of the business we tried to take that into consideration. If he was merely a hired salesman we took that into consideration. We did not value any hired salesman but some of these men might be the executive head of the business and be a salesman too. I felt [fol. 1432] that the executive capacity in which some of these men worked affected the valuation. The estimation of their executive capacity had a bearing on the salary. Mr. Morgan is the executive head of the business and sells a great many sheep not only for his firm but for other firms. He is a man that is well posted in the sheep business as any man in the market. I expect he has been in it for 20 years to my personal knowledge. We placed a value of $4,000 on the services of this man which I thought was a very low amount. When we consider the commissions that he was getting we figured that was a fair value for his services. These men, being owners or part owners of the commission business, do have more or less to do with the executive management of their respective concerns. I know them all personally. In a case of firm 59 I think we appraised Mr. Swift at the highest of any man at the yards. We based that on Mr. Swift's executive ability and his manner of handling his business, and his acquaintance. I think he is one of the best posted commission men that

we have at the stockyards. His executive ability and his knowledge of the business is an advantage to all of the salesmen who actually sell livestock for Swift and Henry. His guidance to those men and his ability to guide them is very valuable. In my business experience as a banker I find it is considerably more difficult to secure executive ability than it is the ability to perform the ordinary routine tasks of banking. Comparatively few men possess the characteristics that go to make up executive ability. Mr. Swift is an outstanding man at our market, and is so con- [fol. 1433] sidered by everybody. He has the ability to handle the business and to handle the loans. If it were not for J. C. Swift that firm would not be near where it is today. It is one of the leading firms at our market and Jim Swift makes it so. He is supported by good salesmen and he is supported by his partner, Charlie Henry, whom we put down for $8,000 a year. Charlie Henry is a good salesman and he has some executive ability. The real executive ability in that firm is in this man, J. C. Swift. I believe that was a reasonable amount. Some of them thought maybe we ought to make it higher but we finally agreed on $24,000. We had as members of our committee Ernest Hill, who has been a head cattle buyer for Wilson and Company up until last April; Mr. Fletcher, who was for many years head cattle buyer for Armour, and Mr. Grant, who had been head hog buyer for Armour up until twelve years ago. In connection with the evaluation of the services of salesmen we had regard for the information which they were able to get the committee as a whole. The appraisal which they put on the relative competency of the salesmen differed between different individuals. I believe the amounts that are set on these sheets are reasonably representative of fair compensation to the various individuals whose services were appraised for the year 1931. I have an intimate knowledge of this livestock industry and the handling of livestock at the yards. I would say that these amounts set out here were as near to an equitable amount as we could arrive at. If I were going into the commission business [fol. 1434] for myself I might prefer to hire some of the higher priced men than to employ some of the lower priced men. In so doing I would probably serve my customers better. I think I am personally acquainted with every man who is on this list. I did not let personal feeling or per-

sonal friendship control me in any manner or affect my judgment. I tried to arrive at an impartial appraisal.

Cross-examination:

I have not heard the testimony of the other members of the committee who appraised the values of the services of the other men in the stockyards as shown in Respondent's Exhibit 204. I have not read the testimony of any of the members of the committee. I know John Clay, Alan Wilson, and F. H. Connor of John Clay and Company. In putting the value on these various men's services we considered their ability and success in handling this business, and executive ability, and the volume of business they handled and their application of their time to the business. We have got some commission firms that are what we call chair warmers. They could not go out in the country, they never do any work, and they just drift along. The business comes to them and they take it. We have others who are aggressive for getting out in the country and hunting this business up and trying to render a real service to their customers. Those men have executive ability. I sat in on each of them and expressed my opinion and gave them my personal observations of these men. We try to arrive [fol. 1435] at a fair value considering the services that the individual man could render. Those are the factors which influenced my expression of opinion in the committee. It might be summed up by saying that ability to get business, ability to handle business after it is gotten, ability to manage business and the services they render.

Where I put varying values it reflected my opinion of the variance of the executive ability of the men to handle the business. The executive ability of the men was a very outstanding factor. We have men in the commission business that demonstrate that they have very good executive ability, where we have others that are very poor. There might be a cattle salesman who is owner or part owner of a firm and who really is a first-class cattle salesman, but would be a poor manager.

Jim Swift is one of the best managers that we have in the stockyards, without any exception. He is a man that is posted on all lines of business and keeps up with it, and he knows what he is doing all the time. Charles Henry, his partner, is a good salesman, but he does not have the

executive ability. I would put a much higher value on Jim Swift's services than I would on Charlie Henry's. Jim Swift's position in his firm is that of chief executive. If Jim Swift would withdraw from the firm, and Mr. Henry was made chief executive, I would not put a value of $24,000 on Mr. Henry's services. He would have to demonstrate that he had that ability first. The same principle [fol. 1436] applies to all of these men. We value them because the man had the ability. He could handle the business, and another man in that same position might not be able to. We valued the men as individuals and not by reason of the position they happened to be in. If we were sizing up this man and figured what we were going to pay him, or what he was worth, we would have to take that into consideration. If he had very little executive ability he would not get much business. That is the reason that we have so many of these little firms down there. We have a lot of firms that do very little business, and the reason is the executive ability they have. The executive ability would be shown in the success they have had in building up their business, like Jim Swift builds up his business. It is worth money to the man that has it, and he can get money for it.

The values put on the services of these various men by the committee represent amounts which I would be willing to pay these men for their services for the year 1931 if I had owned the businesses with which they were connected. If I were going into the commission business today in Kansas City, Jim Swift is the first man I would want to associate with me, and considering his executive ability, his manner of handling his business, judging it over a period of 20 years, I would say that he would be the first man that I would hire. If I could not get him for less than $24,000 I would hire him if he would give me the same service that he has been giving that business. My answer in that re- [fol. 1437] spect would not be changed if I knew that to have paid Jim Swift $24,000 in the year 1931 would have caused his business a loss of some $30,000. I would not change it for the reason that Jim Swift is worth the money, whether the business makes it or not. He has got the volume of business, and he controls the business by reason of his ability, his acquaintance, his knowledge of the business, his experience, and his past record of handling the

business. The same principle applies to the other men; that is to say, their worth is the value that the committee put on them, whether their business is able to make that or not.

The fact that there would be a deficit of $256,970.65 for all firms, except the two cooperatives, after making an allowance for the appraised salaries, would not change my opinion as to the value of those owners' services. The business probably may have gone down. They probably are not doing as much business as they did. I still think those men are worth that money, and when the business gets back to normal again there is no question but what they will make it. As to whether I would be willing to pay them these salaries that I have fixed for 1931, knowing that there would be that big a deficit, I would not be displaying good judgment if I had that knowledge and knew that they were going to lose money. I did not know that they were losing that much money. It looks as if I would have actually lost $256,000 if I had done what I have proposed here.

I know Mr. Elliott of Elliott and Swain who is president [fol. 1438] of the exchange. I appraised his value at $4,000. I knew that he gives all of his time to his business as hog salesman and manager.

I know Mrs. T. S. Moffett who is connected with Firm No. 65 and whose value is fixed at $6,000. As to why we allowed her $2,000 more than Mr. Elliott, the business of Elliott and Swain is more the hog business than it is the cattle business. The hog business does not require a man to go to the country and look after the business like the Moffett business does. The volume of business is not as great as the volume of the Moffett business. The volume of business of Elliott and Swain was $14,900. The gross commissions of the Moffett Commission Company were $25,000. Here was a woman, as we understood it, who was running that business. She has a man by the name of Baker who helps her run it. As we understand it, she is at the head of this business and owns it. She succeeded her husband who used to be in the old firm of Moffett Brothers and Andrews. The name of Moffett Brothers has been known favorably at the yards for a great many years and they have a good volume of business; pretty near double what the other firm has.

I presume Mr. Henderson of the Moffett Livestock Com-

mission Company is in a position to know the services which Mrs. Moffett renders in that business. If Mr. Henderson told me that Mrs. Moffett took no active part in the business other than to help out in the office in rush times, I would not change my opinion as to [fol. 1439] the valuation to be placed upon her, because, as I understand it, she owns that business and is responsible for it. It is my understanding that she manages that business. I might be mistaken, but we had none of that information before us when we made this appraisal at all. All we had was what was right here on this sheet. We had nobody to talk to, and all we could base our opinion on was our knowledge of these different individuals. It was my understanding that she was the sole owner of the business. If I knew that she did not manage the business, but was merely the owner, I would change my opinion as to the value placed upon her services. If we had more details, we might change it on several of them, but we did not have the details.

In referring to the protection which I had on account of the guarantee of title to livestock sold at the stockyards, I had in mind the insurance against mortgage and theft carried by the commission firms and also the integrity of the man. As a banker, the integrity of the man to whom I make a loan is one of the biggest factors in whether or not I will make the loan. If I don't believe in his integrity I won't make the loan at any rate.

Redirect examination:

If I were going into the commission business and pay these men the amounts specified in the appraisal, and knew that this deficit of $256,000 had been the experience of the past, I would want to be assured that the rates that I was permitted to charge for the future would be sufficiently compensatory to repair that loss and provide a [fol. 1440] profit, or I would want to foresee conditions in the business for the future which would better that situation. I would not go into that business if I was going to lose that much money. Changed conditions in the future or higher rates of commission would be the only thing that could change that situation. I would not knowingly subscribe to paying a man more salary than his gross commission, but then he might be worth more than I would pay

him. I would not pay a man $4,000 knowing that the total amount of his gross commissions was $3,628. When we went over that very matter we said "if that man is not worth $4,000 a year he was not worth anything."

As to the rate of interest which we charge on overdrafts, we make a distinction based on the balance that they carry with us. That balance is based on the amount of money that they have in their business. They might sell a load of cattle to a man in the country and draw a draft with the documents attached, and ship those cattle to him. We give them credit for that draft today and send the draft out for collection. It may take from one to five days to collect that draft. We charge them interest for the amount of money that they have of ours during that four or five days. The interest charged will be based on the balance they maintain with us or the amount of cash they have in their business, or the financial responsibility that backs their firm. I would say that it would average seven per cent. In my opinion, the fact that the value of exchange memberships as held by individuals and agencies [fol. 1441] is pledged to the security of the market operations has a stabilizing effect and has value from the standpoint of those who deal with these agencies. If a commission firm does not pay its debts or can not pay its debts, the exchange membership, as far as it will go, will protect that indebtedness. It would be applied to its debts the same as any other property, and by "debts" I mean "market obligations." It could be taken for what he owed in debts contracted in connection with his business on the yards as distinguished from general indebtedness.

(Whereupon the witness was excused.)

(Whereupon, Respondent's Exhibit No. 204 was received in evidence over objection by counsel for the Government.)

Government Exhibit No. 128

(Whereupon, respondents' counsel offered in evidence page 42 of Volume 9, Issue No. 2, of Crops and Markets, for the month of February, 1932, appearing as a part of Government Exhibit 128, but not included in the parts or portions of the publications comprising said exhibit as of-

fered in evidence by the Government, and particularly referring to the figures showing the average price on the farm of all cattle and calves for January 1, 1932, as being $26.64 per head, swine $6.14 per head, and sheep and lambs $3.40 per head. He also offered the tables appearing on page 48 of the same publication which give the farm [fol. 1442] value of cattle and calves by States, and pages 52 and 53 which give the same information in respect to sheep, and pages 54 and 55 relating to swine.)

J. B. WALLACE, a witness having previously been called by the respondents, returned to the stand and testified in substance as follows:

Direct examination continued:

Accident insurance as applied to livestock men has shown changes since 1929 and 1930. A new manual came out in 1932 that changed their classification which would bring them up to almost double what they paid before. As to executives or office people or members of firms that might be in the yards only for a small part of their duties, they were increased 20 to 25 per cent. An ordinary policy written for $5,000 and $25 a week would cost an attorney or a man uptown $25, and would cost the man down in the livestock firm $35 to $37.50. If he engaged in yard work, it would cost him $42.50 for the same policy.

The fidelity bonds were increased ten per cent on November 12, 1931. Automobile public liability was increased ten per cent in January, 1932, and there have been some increases on cars since then. Previous to then and after April 20, 1931, there was an increase in fire and theft insurance ranging from 10 to 25 per cent, including restrictions applying to accessories. There is a flat charge on accessories from $8.50 to $12.50. There have been increases in public liability, but I have no record of live- [fol. 1443] stock commission firms carrying public liability, for the reason that public liability rests on the yard company mostly. The responsibility of the commission firm would be more or less contingent, and we would not urge the carrying of that form of insurance along with the other insurance.

As to the liability in case cattle get loose, or somebody gets hurt by a loose steer, it is my opinion that is mostly a responsibility of the stockyard company. A man goes out there, enters the yards and either rents a horse of the stockyard company or he gets on top of the fence, which is maintained by the yard company. An insurance man would be well justified in soliciting and urging that contingent liability insurance in order to fully protect these livestock commission merchants and others down there. In the last three or four years, insurance men have felt that it would be useless to argue to get them to take this additional insurance if they felt that they could get along without it.

Cross-examination:

The increase of 16⅔ per cent in fire insurance took effect June 1, 1930.

The company has intimated that it does not think that it has as good a source of protection in the Live Stock Exchanges at other markets. From remarks or comments in letters during the past five or ten years, or maybe more recently, I remember them saying that they would not write bonds at St. Paul and Fort Worth at any figure at all for anybody. I am referring to bonds under the Pack- [fol. 1444] ers and Stockyards Act. I will say my company writes the bond of most market agencies at the Kansas City stockyards.

The fidelity bonds are the bonds which the employees of the market agencies give to the market agencies to insure the fidelity of the employees. I write a good many of those bonds at the Kansas City Stockyards. The employer pays the premium for the reason that the employer is a beneficiary of the insurance, and he should be. The rates on these bonds have been increasing. The rate was increased from 50¢ to 55¢ per hundred.

I have lost nearly all my accident business down there.

I write the workmen's compensation insurance, but it is controlled by state law in both Missouri and Kansas.

These increases which I spoke of in the premiums on that insurance were made by the companies subject to the tribunal set up by the State. The increase in the premiums is from 20 to 25%. The insurance department of neither Missouri nor Kansas has made any public statement, that

they are going to permit an increase in these premiums, as far as I know.

Redirect examination:

I would not come in contact with the men that have been injured recently as much as I did when I had more policies. I remember about the accidents to Graham Witherspoon and Jim Ryan in the last year or two. When I testified about accidents I had in mind 20 or 25 years' experience in [fol. 1445] writing quite a nice volume of accident premiums, and I did not feel that there was justification for raising the rates as far as Kansas City was concerned.

(Whereupon the witness was temporarily excused.)

Mr. John W. Roberts, a witness called by the Respondents, after being sworn, testified in substance as follows:

Direct examination:

I am the same John W. Roberts who testified in the former hearing. My line of work has continued to be the same since my testimony in the former case. During the interval I made a study of the costs of terminal market operations at St. Joseph, Missouri, and down to date have been practically constantly engaged in cost work principally on the railroads. Since that time I have handled a case before the Interstate Commerce Commission involving the recapture of alleged excess earnings for the Louisiana-Northwest Railroad Company; the Interstate Railroad Company; the Peoria and Pekin Railway Company, and the Abilene and Southern Railway Company; and also appeared in the Six-Hour-A-Day case on behalf of the Brotherhood of Railroad Trainmen.

During the fore part of September, I came to Kansas City and talked with the Kansas City Livestock Exchange concerning the reopened case. It was explained to me that the exchange was desirous of making as extended an examination as possible of the conditions prevailing during the year 1931 which was to be used for test purposes in the re-opened case. It was also desired to determine as accurately and as extensively as possible the relative revenue [fol. 1446] yield of the rates published in Tariff No. 3 as

compared with those resulting from Tariff No. 2. It was also explained that on account of the very substantial changes in the volume coming to the market in 1931 as compared with 1929, the same having substantially decreased and changed somewhat as to its constituency, that it was desirable to make another test of the service cost based on the experience of 1931, and in the light of the price levels and other changes then obtaining. It was decided to use the audits of the books and the compilations made by Mr. Bachmann to the fullest possible extent in setting up a cost study based on the experience of 1931. It was also decided that the particular purpose of that cost study was to throw some light on the relationship of the revenue produce of Tariff No. 3 as compared with the unit costs of similar services as they were experienced in the year 1931. It was finally decided that we should undertake an analysis of the account sales of 1931 for all firms which would permit of an application of the provisions of Tariff No. 3 and at the same time compiling from the same account sales the revenue yield of Tariff No. 2, with the object of comparing the gross yield of both tariffs.

Respondents' Exhibit No. 206

This exhibit consists of three sheets, and its purpose is to bring into comparison the unit costs per head, as developed by my study, and the unit revenue per head representing the yield of Tariff No. 2 for 1931, as developed by Mr. Bach- [fol. 1447] mann. This comparison is shown by individual market agencies and for 59 firms collectively which are exclusive of the cooperative agencies Nos. 10 and 36 and agency No. 8. The comparison is shown by species, selling and buying service, and by the several arrival sub-accounts under selling service. The unit costs shown on this exhibit are taken from the last line of the respective agency brackets on Exhibit No. 207.

The unit costs shown under the selling service arrival accounts are adjusted within each species to reflect the relative ability to pay as indicated by the average gross proceeds per head. It may be understood that the aggregate species costs, as found, are not adjusted with respect to each other. The adjustment is confined to the selling service costs found with regard to each species, which is to say that out of respect to the average gross proceeds per head

for animals arriving by rail, by truck, and the seconds, respectively, there has been a shift made in the costs to reflect their difference in value and their relative ability to pay, as indicated by the gross proceeds.

From the bottom bracket of Sheet No. 3 of the exhibit, it may be noted that in all save five instances the average commission revenue per head is less than the unit cost per head. The five instances where the costs as found are in excess of the unit revenue are hog-buying service, sheep-selling service on the rail, drive-in, and total selling accounts, and sheep-buying service. The excess in each case is very slight.

[fol. 1448] Respondents' Exhibit No. 207

This exhibit is entitled "Final Cost Statement Recapitulating Elements of Operating Cost, Including Return on Investment, Showing Unit Cost Per Head." It consists of nine sheets, and on it are assembled the respective principal classes of expense which comprise the market agencies' operating costs, and the amount which should be allowed as the equivalent of eight per cent per annum on the invested capital, which items collectively comprise the total cost which should be covered by the yield of the service rates. The total costs are shown for the three species and sub-divided as between selling and buying service and broken down for the respective arrival accounts. It is shown by individual market agencies and at the bottom of page 9 it is recapitulated for the 59 firms covered by this study. The aggregate cost assigned to each of the species service and arrival accounts is divided by the number of head handled under each account to arrive at the unit costs per head.

The selling service cost developed has been adjusted as previously mentioned to reflect their relative ability to pay as measured by average gross proceeds. This adjustment is shown on the fifth line of each bracket on the nine sheets which comprise this exhibit. The purpose in presenting this cost study is to provide material for consideration in determining what adjustment, if any, may properly be made in the tariff rates presently prevailing, as reflected by Tariff No. 3, and the further purpose is to compare the unit [fol. 1449] costs experienced in 1931 with the unit commission revenue derived from Tariff No. 2.

The general purpose of the segregation by weight classifications in the case of hogs and cattle in Tariff No. 3 was to recognize the varying value per head which attaches to animals in these respective weight classes.

At the time Tariff No. 3 was devised, the information at hand respecting the average gross proceeds derived from the sale of cattle and calves in the several weight classifications was very meager. Such information consisted principally of the known fact that the gross proceeds derived from the sale of animals in each weight classification were less than those derived from the sale of animals in the next higher weight classification. As a consequence there was introduced in Tariff No. 3 an attempt to fix the service charges with some regard to the relative ability to pay. In this study we have been able to obtain more specific information respecting the average gross sales proceeds of cattle, calves, and hogs which fall into the category of weight classes established in Tariff No. 3.

On the Kansas City market, cattle, hogs, and sheep, respectively, are handled in departments maintained by the respective market agencies which are generally pretty well defined. Because of fundamental differences inherent in the three species, in the number of head comprised in consignments, in the manner and time of their arrival, the manner in which they are handled in the yards, and the man-time required to perform the necessary services, it is [fol. 1450] quite manifest that the average cost per head of handling cattle and calves collectively is more than the average cost per head of handling hogs, and the cost per head of handling hogs is more than that per head of handling sheep. It seems eminently proper that each species should be made to carry the selling and buying expense which it occasions as nearly as it may be determined. No attempt has been made to adjust the species total costs. As respects the aggregate costs determinable for the respective species, there is the patent fact that such costs may not be ratably distributed over the total headage handled with equitable results. The manner in which the volume arrives and the quantity contained in the consignment available to be sold has a great influence on the cost of the service which it receives. The principal difficulty encountered in the distribution of costs in this industry has been to break down or allocate the aggregate species cost to the subdivisions thereof which receive services which are

separately rated in the tariffs. Rail arrivals represented 80%, truck arrivals 14%, and seconds 6% of the total headage of cattle and calves received by the 59 firms covered by this study in 1931. In the case of hogs, the rail arrivals were 33%, truck arrivals 57%, seconds 9%, and split commission headage 1% of the total receipts. In the case of sheep, the arrivals by rail were 86%, by truck 11%, and seconds constituted 3%. The greater portion of the rail arrivals of all species reach the market and are serviced [fol. 1451] on the first two days of the week. Truck arrivals not only use the first two days of the week, but with varying intensity occupy the remaining days of the week. Truck arrivals are in the aggregate insufficient in the case of any one firm as in the case of all firms to fully occupy the service capacity of the agency. This is also true with respect to rail arrivals and seconds. Considering the demands upon the service, the perishable quality of the product which it serves, the open six-day market and the lopsided patronage of it, and the stand-by nature of the service which the agencies must render, it is easily perceived that the cost-finding problem presents difficulty which may be well-nigh insurmountable.

Chief among the difficulties is the equitable disposition of what actually proves itself to be stand-by expense. Any method of distributing cost on the basis of time actually devoted to handling the different mode of arrival would burden trucked-in headage with a greater cost per head than any other class of business. This is for two reasons: first, the smaller consignments and the fewer number of head handled in operations requiring the same man-time, regardless of the number of head handled; and secondly, truck-in arrivals contain a greater variety of grades and classes of animals than consignments embraced in other modes of arrival. All classes of receipts are inter-dependent in maintaining the market and conjointly they should be made to bear their fair cost of maintaining the market facilities. If the truck-in business were not available to [fol. 1452] occupy a part of the stand-by capacity which has to be maintained to meet the heavy demands of rail arrivals during the forepart of the week, the cost of handling the rail arrival business would necessarily be greater if the same marketing opportunities were provided. Likewise, if the rail-arrival business were not available the trucked-in business by itself would be insufficient to main-

tain the advantages of the existing market, and would entail handling costs far in excess of those prevailing under present conditions.

The adjustment respecting the relative ability to pay is predicated on the average gross proceeds per head for lack of a more exact measure of the relative ability to pay.

Respondents' Exhibit No. 208

This exhibit is entitled "Sample Computations—Adjustments within Species Costs to Respect Ability to Pay as Measured by Average Gross Proceeds—Selling Service Only." This exhibit consists of a single sheet. The adjustment was actually computed for each and every one of the 59 market agencies covered by this study, but on Exhibit No. 208 the figures are shown only for the first six firms involved and is introduced as a sample sheet to illustrate the method of computation.

On the first line in the body of this exhibit, which is entitled "Average Proceeds Per Head, 14 Firms", there are shown for rail, drive-ins, seconds, and splits, under the respective species, amounts expressed in dollars and cents [fol. 1453] representing the average sales proceeds realized from animals falling in those categories which were sold by 14 firms during the year 1931, as set out on Respondents' Exhibit No. 248. These 14 agencies handled approximately 30% of the total volume of each species sold by the 59 firms. These amounts shown in the first line of this exhibit are used as the standard average gross proceeds per head for the purpose of making this adjustment. With respect to the brackets in this exhibit which relate to the respective agencies, it will be noted that on line one is shown the number of head falling in each arrival account. On line two is shown the product of multiplying the number of head by the average gross proceeds per head as shown on the line at the top of the page. The product developed in columns A, B, and C of the form is totalized at column D to arrive at the aggregate average gross proceeds.

Respondents' Exhibits Nos. 209, 210 and 211

These exhibits deal with the salary and wage element of the total operating costs. This element consists of compensation of worker-owners' services and the other to the salaries and wages paid non-owner workers.

The major number of the respondent agencies are enterprises conducted by an individual operating as sole owner of the business or by two or more individuals operating as co-partners; or by a corporation whose stock is held either in its entirety or practically so by individuals who devote their entire time to the conduct of the corporation's busi-
[fol. 1454] ness. Monies drawn by any owner for personal services rendered are manifestly amounts which fall in one of three categories, to wit:

(1) Regular monthly stipends fixed with a predominating self-interest;

(2) The amounts withdrawn from the earnings of the business which are regulated not by the worth of the services rendered but by the next yield of the service rates which are under investigation with this proceeding; and

(3) Amounts fixed by their co-owners, which may be based not solely upon the worth of the personal services rendered, but partially in recognition of monies invested in the business.

It must become apparent that for service cost finding purposes the cost value of the personal services so rendered cannot be determined on a reasonable basis and used along with the expenses represented by the disbursement of cash.

The Government accountants have dealt with such by superficialities and estimates of their own making in a way which is both inconsistent with facts and destructive of the conclusions at which they finally arrive. In connection with the 59 firms, 131 positions were during the year 1931 occupied by individuals who were owners or part owners of the market agencies which they served. In everyone of the 59 agencies save one are to be found positions occupied by workers whose remuneration, if any, was determined on a basis which was dominated by self interest even though there may not have been opportunity in all cases to have satisfied that self-interest.

[fol. 1455] In setting up the amounts of salary and wages used in determining the aggregate unit service costs portrayed in the Government's Exhibits 115 and 115-A, Mr. Bachmann has seen fit to accept the salaries appearing upon the books as having been paid to worker-owners and part-

owners whether they were fixed and paid in regular amounts monthly or whether they represented the monthly withdrawals of the individuals. In instances affecting 14 individual owners or part-owners attached to 10 of the 59 agencies he used the amounts shown upon his blue audits as net profits in lieu of remuneration of owners' services. In other cases, where books did not show a salary, as having been paid the owner but did show net profits for the year, the net profits were not used as representative of owners' salaries. The sum of $432,597.32 or roughly one-third of the total service costs for the 59 firms represents the Government accountants' arbitrary determination of worker-owners' remuneration for services rendered. This result is attributable solely to the net yield of the rates, the reasonableness of which we are here seeking to test by comparing them with the unit cost of the services rendered to earn them.

To provide as ingredients of the costs of the respective agencies amounts which may represent fairly the cost value under current conditions of the personal services rendered by owner-workers and to dissociate from such amounts the color of self interest, self served, the determination of such [fol. 1456] amounts has been left to a board of appraisers appointed by the exchange, whose findings and testimony in support thereof already appears in this record.

Exhibit No. 211 consists of three pages and sets forth in detail the owners' salaries as they were appraised by the board. In this exhibit the appraised salaries of owners or parts thereof appertain to Kansas City market operations, which have been taken into my costs are shown in Column D. For the 59 firms they aggregate $597,775.00. With respect to certain individuals, part of whose time was devoted to the loan or other business, the sum of $11,838.17 has been deleted.

The per cent of time devoted to extraneous affairs was shown in each case on the Government questionnaires.

On this Exhibit No. 211, the balance of the appraised salaries, which relate specifically to the conduct of the market agencies at Kansas City has been distributed to the several functions of work upon which the worker was engaged during the year 1931 according to the information returned on the Government questionnaires.

Respondents' Exhibit No. 212

This exhibit is entitled "Distribution of non-owners salaries and wages 1931 by firms—as shown on Government questionnaires with exceptions."

Exhibit No. 210 consists of one sheet and is merely a consolidation by classified accounts of the owner and non-[fol. 1457] owner salaries and wages dealt with particularly on Exhibits Nos. 211 and 212.

Respondents' Exhibit No. 213

This exhibit is entitled "Distribution of selling portion of all salaries and wages to arrival accounts—on the basis of number of head plus number of drafts."

As the result of discussion with salesmen and yardmen, I was convinced that the time study could not be fairly used as a basis for distributing the salaries and wages expenses between the species arrival accounts. I was led to adopt the same basis used by Mr. Bachmann, which is to say the number of head combined with the number of drafts. This basis was used for lack of something better. Its use makes some differentiation to respect the average number of head per draft in the different arrival accounts. I plotted the effects and found that the head plus drafts gave a distribution which fell between that resulting from the use of head on the one hand and drafts on the other hand, and it resulted in charging an account with a lesser amount per head as the average number of head per draft increased, which seemed to me to be a logical result. I do not know whether the head plus draft basis of distributing this expense to arrival accounts gives an approximately correct result or not. There is no means of testing it. It gives equal weight to the number of head handled and the number of drafts in which the animals were sold.

Exhibit No. 214

This exhibit is entitled "Number of head (from Schedule [fol. 1458] 15) plus number of drafts (from Schedule 5A)—for distribution on selling salaries to arrival accounts."

Exhibit No. 215

This exhibit is entitled "Distribution of yarding (selling) portion of all salaries and wages to arrival accounts—on basis of number of drafts per Schedule 5-A".

The number of drafts handled in each arrival account has been used as a basis for the distributing of salaries and wages for yardmen assigned to species accounts in accordance with the information obtained from the Government questionnaire, after having apportioned such amounts between selling and buying service, also on the number of drafts as shown on Exhibit No. 216.

Respondents' Exhibit No. 216

This exhibit is entitled "Distribution of total yarding salaries to selling and buying—on basis of relative number of drafts by species."

Respondents' Exhibit No. 217

This exhibit is entitled "Number of drafts by species—for distribution of total yarding salaries to selling and buying."

Respondents' Exhibit No. 218

This exhibit is entitled "Distribution of office salaries to selling and buying by species and to arrival accounts—on basis of number of account sales, purchases, and drafts, respectively."

Considering all modes of arrival together, the drafts per account sale *per* cattle and calves was found to be 2.9; for [fol. 1459] hogs 1.7; and for sheep 2.1.

Respondents' Exhibit No. 219

This exhibit is entitled "Number of Drafts, excluding buying, and per cents for distribution of office salaries (selling) to arrival accounts in each species."

Respondents' Exhibit No. 220

This exhibit is entitled "Number of Account Sales and Purchases, including seconds and splits and per cents for distribution of office salaries to species and to selling and buying."

Respondents' Exhibits Nos. 221 and 222

Exhibit No. 221 is entitled "Distribution of B. G. and M. salaries—element "A"—Circulars, Correspondence, Etc.—

selling portion only—on basis of number of head to rail and drive-ins only."

Exhibit No. 222 is entitled "Distribution of B. G. & M. salaries—element "A"—Circulars, Correspondence, Etc., to selling and buying by species—on basis of number of account sales and purchases."

The proportion of salary expense, which is chargeable to selling service, is distributed between the species accounts and each species' proportion is further distributed to its rail and drive-in arrival accounts.

The apportionment of expenses between selling and buying services is made on the basis of the relative number of account sales and account purchases rendered. The species proportion is assigned to its rail and drive-in arrival accounts on the basis of the number of head of animals [fol. 1460] handled in each account. Seconds and split volume are excluded from participating in this expense for the reason that none of the expense is devoted to the procurement of the traders' business represented by seconds handled and from the nature of the split volume it cannot be determined whether it should be assigned to the rail or drive-in accounts. As nearly as may be ascertained, this expense is attributable to efforts to hold the business attached to the agency, and to attempt to attract new customers. It represents the time spent by agency employees in the office preparing and mailing market letters and circulars, conducting correspondence with the firm's patrons and others, contacting customers in the office, etc., the purpose of which is to have their patronage continued or to procure new customers. Amounts shown on this Exhibit No. 221 are carried forward to the fourth line of the recapitulation of salary and wage expense.

Respondents' Exhibit No. 223

This exhibit is entitled "Number of Account Sales and Account Purchases, excluding seconds and splits—and per cents for distribution of B. G. & M. salaries—Element "A" to selling and buying."

Respondents' Exhibits Nos. 224, 225 and 226

Exhibit No. 224 is entitled "Distribution of B. G. & M. Salaries—Element "B"—Country trips, selling service only to rail and drive-ins only—on basis of head."

Exhibit No. 225 is entitled "Distribution of B. G. & M. [fol. 1461] Salaries—Element "B"—country trips, selling service only to species—on basis of number of account sales."

Exhibit No. 226 is entitled "Number of Account Sales excluding seconds and splits, and per cents for distribution of B. G. & M. salaries—Element "B"—to species.

These exhibits deal with proportion of total salaries and wages appearing in Column J of Exhibit No. 210, which is denominated "Country Trips", and classified "Business Getting and Maintenance Expense."

For the 59 firms, Element "B" of the B. G. & M. expenses amounts to $93,815.15, while Element "A" aggregates $107,529.80.

The country trip expense, characterized as Element "B" is distributed under Exhibits Nos. 224 and 225, and the basis for the distribution is contained in Exhibit No. 226.

The labor expense comprehended in this B. G. & M. Element "B" account represents time spend in the country doing whatever it is that salesmen do when they go to the country. It has always seemed to me that this so-called appraisal work is really in the nature of an auxiliary selling service and not of the nature of business volume promotion. Some of it may be on the border line between performing a continuation of service in the country, which is supplementary and auxiliary to that furnished on the market, and putting forth effort to hold the business already attached to the firm or to procure additional business which is not so attached. It was this indefinite character of this class of [fol. 1462] expense, which led me to isolate in the 1929 study, from the other, so-called B. G. & M. expense, concerning which there is no doubt as to its character as business promotional expense.

It is not possible from records available to determine what proportion of Element "B" is chargeable to the so-called appraisal trips and what proportion is chargeable to trips made solely for the purpose of soliciting new business or to retain business which the agency has theretofore enjoyed. To the extent that the expense may arise from examination of livestock in the country for the purpose of appraising its progress and development toward prospective marketability, it is in the nature of a service which is auxiliary to that rendered at the market place, and which

should not be classified as business promotion. In addition to the time spent in such work, which has to be paid for, whether the men are in the country or remain at the yards, there is also a considerable out-of-pocket outlay for travel and subsistence expenses which would not be incurred if the men remained at the yards.

If this is invariably true, that appraisal trips to the country are made only in response to requests from customers, it would seem to remove the expense entailed from the category of B. G. & M. and require its classification as a selling service performed off the market preliminary to the actual selling service performed on the market. The classification of this expense would perhaps not greatly affect the [fol. 1463] results of its distribution to the final unit costs. The correct classification of it is highly important in the event that the Secretary is inclined to limit the amount of the expense incurred for business getting and maintenance in his consideration of unit costs for rate making purposes.

The salary feature of this B. G. & M. Element "B" is distributed to rail and drive-in arrival accounts of the respective species on the basis of the number of head in each account for each species. The total amount assignable to each species, as developed on Exhibit No. 225, is shown in Columns B, F, and J, respectively, on Exhibit No. 224. The percentage which the rail headage is of the sum total of rail and drive-in headage for each species is shown in the next succeeding column to the right.

The amount chargeable to the rail arrival account is shown in the next following column and is the product of the percentage applied to the species total. The drive-in proportion is the difference between the amount assigned to rail and the species total.

On Exhibit No. 225 the expense is apportioned to species on the basis of the number of account sales. It contemplates that each consignment received to be sold should participate in this expense on an equal basis regardless of the number of head in the consignment.

Exhibit No. 226 is supplementary to Exhibit No. 225 and [fol. 1464] merely shows the number of account sales handled for the respective species relating to rail and drive-in arrivals only, which comprises the basis for the distribution of the expense.

Mr. Bachman has distributed BG&M salary and wages as

well as the related travel and subsistence expense amounting to $201,344.95 and $451,142.26, respectively, to species and to arrival accounts on the basis of the commission revenues from the very rates to measure which we are here seeking to provide a yardstick in the form of service costs. Whatever degree of disproportionateness and impropriety may be contained in the rates which produced the revenue will affect his unit costs in like fashion. Remembering that there is another 400 odd thousand dollars of so-called "owners' salary" expense in Mr. Bachmann's cost base, which is not salary expense at all, but amounts which are controlled entirely by the yield of the rates here in question, coupled with self-interest which covers them with doubt as to their propriety for use in a rate making cost, it will be discovered that nearly 50 per cent of the amount of Mr. Bachmann's aggregate cost possesses infirmities which deprive the figures of probative value.

Respondent's Exhibit No. 227

This exhibit is entitled "Recapitulation of Operating Expenses (Other than Salaries and Wages) Distributed to Arrival Accounts".

Respondent's Exhibit No. 228

This exhibit is entitled "Distribution of B. G. & M. Ex- [fol. 1465] pense—Element. "A", Circulars, Correspondence, etc., Selling Portion only—On basis of B. G. & M.—Element "A" Salaries (Number of head.)".

These expenses were taken from the Government auditor's blue audits and with respect to the total amount of operating expenses, exclusive of salaries and wages there is no disagreement.

Respondent's Exhibit No. 229

This exhibit is entitled "Distribution of B. G. & M. Expense—Element "B", Country Trips, Selling Service only—On basis of B. G. & M. Element "B" Salaries (Number of Head.)". This is a single sheet exhibit and shows the amounts representing travel and subsistence expense on country trips which was assigned to the species accounts on the basis of the number of accounts sales, exclusive of seconds and splits, and is here distributed to the rail and

drive-in arrival accounts of each species on the basis of the distribution of the salary element of this B. G. and M. Element "B" account, which is discussed in connection with Exhibits Nos. 224-226. The remarks made concerning the salary feature of this account are also applicable to this expense feature with this additional comment. Mr. Bachmann classified as B. G. & M. expense the sum of $21,713.64, which he found on the books as having been taken out of B. G. & M. expenses and classified as administrative and general expenses in my set-up. While this amount represents the figures which Mr. Bachmann developed as payments made to the Exchange from the agencies' records, [fol. 1466] the sum is $6,633.11 less than the records of the Exchange shows to have been accrued as due from the same agencies during the year 1931. This expense consists of Exchange membership dues, of assessments to maintain the working funds of the Exchange for the purpose of defraying expenses of activities which are directed to the protection of the agencies' interests and the interests of the market as a whole, such as participating in transportation rate cases which might effect the market welfare; in asserting the agencies' rights and protecting their interests in cases like the one at bar; in maintaining the Exchange market activities in general. I fail to see any justification for coloring this sum with any allusion to "Soliciting" in the sense that it relates to business getting and maintenance. The character of the expense would justify its classification as administrative and general expense. When setting up the bases of the costs as they appear in these exhibits, Mr. Bachmann's total B. G. & M. expense was taken and therefrom was deducted those items which were found to be in the nature of business protection expenses which were called B. G. & M. Element "A" in my distributions. The remainder of his total B. G. & M. expense was treated as Element "B", the fact having been overlooked that this balance contained this element of exchange dues and assessments. The bases on which it is distributed as a part of my B. G. & M. Element "B" does not affect the unit costs in any perceptible degree. If this $21,713.64 were considered to be B. G. & M. expense or if any substantial part of my [fol. 1467] Element "B" expense were considered to be of that character, it would be misleading and erroneous.

Respondent's Exhibit No. 230

This exhibit is entitled "Summary of Expenses (Adjusted) By General Accounts."

Respondent's Exhibit No. 231

This exhibit is entitled "Reconciliation of Expenses with Government Cost Study—Showing Additions and Deductions by General Accounts." The maintenance expense on horses and horse equipment used by cattle salesmen is actually selling and buying expense for which reasons those items are so classified through the adjustments and appear in columns H to M, inclusive, on sheet 1 of this exhibit. The horse and saddle expense, including depreciation on horses, was included in yarding expense by the Government auditors. That expense is truly of a nature of buying and selling expense. Mr. Bachmann determined depreciation expense by the compound interest method. That method of computing the expense of depreciation may be quite all right in cases where the amounts collected for depreciation are placed in a funded reserve and the money put out at interest but no such condition obtains in the case of any of these market agencies. They have not been able to turn their depreciation expense into cash receipts and have no cash reserves set up to meet their losses through depreciation when it ultimately matures. The depreciation expense included in the costs which are con- [fol. 1468] tained in my exhibit was computed on a straight line method in an amount shown in column S of sheet 2 and the charges are based upon the depreciable values shown in the Government's appraisal of the property as at December 31, 1931. Mr. Bachmann applied the rates of 10 per cent per annum to office furniture and equpiment and 5 per cent to office fixtures. My office depreciation expense is based on 5 per cent per annum on office fixtures, 5 per cent per annum on furniture and equipment, and 10 per cent per annum on office machinery. The office depreciation expenses which have been taken into account is $9,785.90 as against $9,515.00 used by Mr. Bachmann. In his classification, Mr. Bachmann uses an account called "risk expenses" in which he has included accruals on fire insurance policies covering office furniture and fixtures. I have included such expenses in the office expenses and the

amounts appear in column T of sheet 2. Mr. Bachmann included premiums on fidelity bonds in his account styled "risk expenses." I believe a more appropriate classification of this expense would be administrative and general expenses and that the most suitable basis available for its disposition to the several accounts would be the labor charges assigned to such accounts. For that reason, it has been transferred from risk expense to administrative and general expense and the amounts appear in column B of sheet 2.

Respondent's Exhibit No. 232

The title of this exhibit is "Depreciation Accruals" on [fol. 1469] Basis of Reproduction Cost New, Property Owned and Used, by Live Stock Commission Agencies, Kansas City Market, 1931."

Respondent's Exhibit No. 233

The title of this exhibit is entitled "Distribution of Risk Expenses (Including Sundry Insurance) to Arrival Accounts." This is a four sheet exhibit and shows the depreciation of risk expense to species and sub-accounts within each species account. On this exhibit these expenses are shown in two accounts, namely "mortgage and theft" and "other risk expenses." The amount included in the Government cost study for mortgage and theft insurance premiums accrued is $8,916.30 for the 59 firms.

Respondent's Exhibits Nos. 234 and 235

Exhibit No. 234 is entitled "Reconciliation of Risk Expenses with Government Cost Study—Showing Additions, Deductions and Eliminations", and Exhibit No. 235 is entitled "Reconciliation of Risk Expense with Government Cost Study—Showing Accounting for Difference." Exhibit No. 234 is a sheet showing the items which were deducted from the risk expense included by the Government in its cost aggregating $40,986.29. Included in the cost presented by these exhibits only $32,313.26 is included, the difference being set forth in detail in exhibit No. 235. Among the eliminations is a debit item of $352.66, representing loss on feed, freight, and so forth, which are ex-

traneous to the cost of service furnished to market patrons, and $6,371.85 representing a loss on bad debts which can hardly be justified as an operating expense. Some of the items included in the Government risk expense total have [fol. 1470] been reclassified to other operating expense accounts. There is left $21,229.86, which has been disposed of in the costs appearing on exhibit No. 207 as other risk expense consisting of the following items:

Workmen's Compensation Insurance Premiums	$8,134.81
Public Liability Insurance Premiums	9,237.26
Error in Government figures on Public Liability premiums	23.41
Errors and adjustments	835.35
Forgery Insurance premiums, and other necessary insurance premiums paid	1,983.42
Loss on refused purchases, astrays, etc.	1,015.62
Total	$21,229.86

This amount is distributed and appears as the final item on Exhibit No. 233, and when conjoined with the mortgage and theft expense on that exhibit, the sum total of the risk expense as classified in this study is distributed on the final cost sheet, Exhibit No. 207, as the third item in the respective brackets in that exhibit. Other risk expenses are distributed to the species accounts on the basis of the total salaries distributed to such accounts.

Respondents' Exhibit 238

Respondents' Exhibit 238 is entitled "Mortgage and Theft Insurance."

Respondents' Exhibit 236

This exhibit is entitled "Public Liability Insurance." On this single sheet exhibit are shown the basis and the [fol. 1471] rate of accrual of public liability insurance premiums, which are based on the 1931 payroll in the same manner in which the assessment is made against the insured. The public liability insurance protection comes under the jurisdiction of both Kansas and Missouri since the hog yards are located for the major part in the state of Kansas. The 1931 Kansas premium rate was 40¢ per $100

of payroll. The Missouri premium rate was 72¢ per $100 of payroll. The payroll has been divided by assigning the hog payroll salary expense to the State of Kansas and the remainder of the hog payroll expense to the State of Missouri, the respective premium rates being applied to such amounts. The total expense is distributed to the species accounts on the basis of distributed payroll.

Respondents' Exhibit 237

This exhibit is entitled "Workmen's Compensation Liability Insurance." This insurance premium also comes under the jurisdiction of both Kansas and Missouri. The premiums assessed to the assured are based on the payroll at the rate of 6¢ per $100 for office workers and $1.42 per $100 for yard workers in Missouri, and 6¢ per $100 for office workers and $1.10 per $100 payroll for yard workers in the State of Kansas. The salary and wage expenses have been divided as between office and yard workers in the respective states, and the total amount has been distributed on the basis of distributed labor expenses.

Respondents' Exhibit 239

This exhibit is entitled "Invested Capital—Summary, [fol. 1472] and Equivalent of Eight Per Cent Annual Return Thereon."

For the 59 agencies, the total capital is shown as $746,487.75, on which the respondents claim they are entitled to a return of 8%, or $59,719.21. I have used the rate of 8% because it seemed to me that the hazard surrounding the capital invested in these enterprises is so great that a reasonable compensation to the investor for the risk assumed could not be less than 8% per annum. The actual fair and reasonable rate of return might be much greater. I have considered that the capital invested in these enterprises is in constant jeopardy. The business is highly competitive in all particulars and at all times. For unavoidable reasons, which are economic in their origin, the investment cannot be surrounded with safeguards and protections of the kind which may be erected around other businesses where 6% and 8% per annum have been held by the courts to represent a fair rate of return. The earnings of the business are subject to Federal regulation un-

der conditions which make that regulation one of the principal hazards attending the security of the capital invested. This hazard consists principally in the fact that the livestock industry at this market, which, I understand, is the case at most if not all of the other markets, is without the equipment of facts and figures derived from its experience that may be effectually used in asserting and defending its own rights under this regulation. There are other uninsurable hazards, principal among which are (1) the hazard attending the clearance of checks and drafts through [fol. 1473] banks widely dispersed throughout the country; (2) the hazard of loss and damage which may be suffered by livestock held in custody; (3) the hazard that the available volume of business may be so affected by Governmental policies advocating cooperative marketing that the agency may be deprived of opportunity to earn enough to pay operating expenses, must less a return on invested capital. All of these hazards attend the sum totals of capital invested, and for that reason I perceive no occasion for applying one rate to a certain part of the capital invested and a different rate to another part of the capital in measuring the fair amount of return to which the investor is entitled, as the Government witness has recommended should be done in this case.

Respondents' Exhibit 240

This exhibit is entitled "Invested Capital—Sound Value (Reproduction Cost New Less Depreciation) of Physical Property Owned and Used."

Respondents' Exhibit 241

This exhibit is entitled "Invested Capital—Investment in Materials and Supplies (Excluding Feed), as per Government Audits, Exhibits A and B."

Respondents' Exhibit 242

This exhibit is entitled "Invested Capital—Cash Working Capital for Operations."

Respondents' Exhibit 243

This exhibit is entitled "Invested Capital—Cash Work-
[fol. 1474] ing Capital for Sales and Purchase Transactions."

Respondents' Exhibit 244

This exhibit is entitled "Invested Capital—Investment in Methods and Practices Employed in Yard and Office." This exhibit is comprised of two sheets and relates to the reproductive cost value of the agencies' investment in that nonphysical property which is represented by the method and practices which are employed in the yard and office work. This exhibit rests upon the same basis as a similar exhibit contained in the record of the previous hearing, in so far as the same firms are involved. For firms not covered by the original estimate of 1929, one similar to the one then made has been compiled and incorporated in this exhibit for the purpose of the present hearing.

Respondents' Exhibit 245

This exhibit is entitled "Commission Revenue, per head, by Firms, by Species, by Arrival Accounts—from Gross Revenue and Number of Head from P. & S. Exhibit, 1931." This single sheet exhibit is the transcript of information taken from Mr. Bachmann's cost-study.

Respondents' Exhibit 246

This exhibit is entitled "Gross Commissions Earned, 1931—from P. & S. Exhibit, pages 42-45 inclusive."

Respondents' Exhibit 247

This exhibit is entitled "Number of Head by Firms, by Species, by Arrival Accounts, 1931—from P. & S. Exhibit, pages 65-68 Inclusive."

[fol. 1475] Respondents' Exhibit 248

This exhibit is entitled "Relation of Tariff No. 3 Commission Revenue by Arrival Accounts (and Cattle by Weight Classes) to Gross Proceeds of Sales, 1931, for Fourteen Firms." This exhibit consists of three sheets, the third sheet of which shows the number of head by arrival accounts by weight classes for 14 firms compared with the total of 59 firms, showing that 14 firms handled approximately 30% of the volume of the 59 firms. On sheet 1 of this exhibit, the data respecting rail and drive-in consign-

ments, respectively, appear; and on sheet 2, similar data for seconds and all consignments appear. The prime purpose in setting up this exhibit was to ascertain by arrival accounts the average gross sales proceeds per head for cattle and calves comprised in the respective weight classes observed by Tariff No. 3, and the average gross proceeds per head for hogs and sheep and, incidentally, to show the relationship of the commission revenue produced by Tariff No. 3 to the gross proceeds derived from the sale of the animals handled in each classification. It will be noted from the upper bracket of the tabulation of sheet No. 1 that columns B to E show the commission revenue under Tariff No. 3 for each of the 14 firms, and columns F to I inclusive; the proceeds of sale by weight classes, all having to do with the species cattle. In columns J to M inclusive appears the same information for hogs and sheep but it is not broken down to weight classes in the case of hogs, and weight classifications are not observed by the tariff in the [fol. 1476] case of sheep. The weight class subdivisions for hogs are not shown for the reason that the tabulations disclose that a number of animals in hog weight classification, being pigs weighing 130 pounds or less, were very few in number. In columns N to Q respectively are shown the percentage relationship of the revenue by weight classes to the gross proceeds by weight classes for the species cattle. The same information for hogs and sheep is shown in columns R and S respectively. This exhibit is limited to 14 firms for reasons of time and expense. An analysis of gross proceeds and commissions by weight classes for the species of cattle and calves was made for a total of 46 firms, as set forth in Exhibit 249, but this analysis did not respect the arrival accounts. When it was requested that these data be compiled by arrival accounts for all three species, it was necessary to have comptometer operators resort to tabulating machine tapes and break down the species weight class totals as to commissions, gross proceeds, and number of head to the arrival account totals and balance them out. Time limitations made it impossible to comprehend more than 14 firms in the study.

After this exhibit was completed it was discovered that cattle commission revenue per head, per Tariff No. 3, shown on the bottom line of each section of this exhibit in

columns B, C, and D only, was incorrect, which is to say by weight classes, for the reason that these particular averages embrace an irregular amount of extra charges as well as the tariff head charge, and weight class No. 1 and weight class No. 2 contain a disproportionate amount of [fol. 1477] such extra charges as compared with weight class No. 3. These two weight classes picked up all the extra charges save when the account sale covered weight class 3 only. These figures have been corrected and are set forth on Exhibit 253, on which at line 10-a may be found the average head charges for each weight class, at line 10-b the ratable proportion of the extra charges pertaining to each arrival account, and at line 10-c the average total charge per head, combining both the headage charge and the weight classes' ratable proportion of the extra charges.

Respondents' Exhibit 249

This exhibit is entitled "Average Gross Proceeds per Head by Weight Classes per Tariff No. 3 by Firms—Cattle and Calves only."

Respondents' Exhibit 250

This exhibit is entitled "Relation of Selling Commission Revenue under Prevailing Tariff No. 3 to Gross Proceeds of Sales by Species, Year 1931, for Sixteen Firms."

Respondents' Exhibit No. 251

This exhibit is entitled "Comparison of Actual Revenue Earned in 1931 under Tariff No. 2 with Revenue Which Would have been Earned with Same Volume Had Tariff No. 3 Been in Effect—Selling Service."

For selling service only, and using headage handled during the year 1931 as the basis for comparison, the commission revenue yield of Tariff No. 3 is less than the yield of [fol. 1478] Tariff No. 2 by 7.6 per cent in the case of cattle and calves, 16.6 per cent in the case of hogs, 10 per cent in the case of sheep, and 9.3 per cent for all three species, according to the results which are set forth in this exhibit. The study covered a volume equivalent to 99 per cent of

cattle and calves, 92 per cent of hogs, and 97 per cent of sheep sold on the market during 1931 by 59 firms, 57 of which are covered by this revenue study. This exhibit consists of nine sheets. It shows the results for each agency individually and for the 57 of them collectively, for cattle, hogs, and sheep, respectively, subdivided as between drive-ins, rail mixed carloads, rail straight carloads, and seconds. All turn-over account sales, where carloads were consigned to one agency with instructions to turn a portion of the headage over to another agency, received special consideration. There were not enough of them and they did not cover a volume sufficient to perceptibly affect the ultimate results. No difficulty in classification was experienced, as the account sale was rendered by the consignee agency. The analysis and the recapitulation of the results constituted a sizable task which involved several operations. The first step taken was to analyze the accounts sales. The second step was to transcribe the information developed by this analysis to punch cards, so that the data could be sorted for classifications and summarized. The third step was to group the individual entries which had been sorted, classified and listed, so as to permit of the application of [fol. 1479] the provisions of Tariff No. 3, and the fourth was to make the application of the provisions of Tariff No. 3.

Respondents' Exhibits Nos. 251-A and 251-B

Respondents' Exhibit No. 251-A is a sample of the account sales analysis form which was used in drawing off the material which was transcribed to punch cards in connection with the analysis of the 1931 account sales.

Respondents' Exhibit No. 252

This exhibit is entitled "Tariff No. 3 Commission Revenue on Relative Basis, Respondents' Service Costs, Including Return on Investment, and Profit or Loss, for 59 Firms Collectively—1931." The resulting profit or loss which would have resulted had Tariff No. 3 been in effect during 1931 is shown on line 6. It may be noted from the last column from the right, which is column U, that on this basis the total loss for all species during the year 1931 would have been $356,347.37.

Line No. 7 of this exhibit shows the profit or loss resulting on the basis of Tariff No. 2 revenue. For the 59 firms on that basis the loss is shown as $219,586.02.

Respondents' Exhibit No. 253

This exhibit is entitled "Apportionment of Arrival Account Costs (Per Respondents' Exhibit No. 207) to Weight Classes—Cattle and Calves—Selling Service Only."

The purpose of this exhibit is to show the relationship of the aggregate cost figures for the several cattle arrival ac- [fol. 1480] counts apportioned to the weight classes on a proceeds basis, and the average revenue per head produced by Tariff No. 3. For rail arrivals, weight class 1, the average cost per head in round numbers is 23 cents and the commissions 29 cents; for weight class No. 2, cost 48 cents, commission revenue 51 cents; for weight class No. 3, cost 83 cents, commission 67 cents; for total rail arrivals, cost 64 cents, revenue 57 cents.

For drive-in arrivals, the average cost for weight class 1 is 33 cents and the revenue 34 cents; weight class 2, cost 91 cents, revenue 67 cents; weight class 3, cost $1.49, revenue 72 cents; all drive-ins, cost 93 cents, revenue 59 cents.

For seconds by weight classes the comparisons are as follows: Weight class 1, cost 21 cents, revenue 21 cents; weight class 2, cost 45 cents, revenue 36 cents; weight class 3, cost 65 cents, revenue 37 cents; all seconds, cost 47 cents, revenue 33 cents.

For all consignments, the comparisons are: weight class 1, cost 26 cents, revenue 30 cents; weight class 2, cost 53 cents, revenue 52 cents; weight class 3, cost 88 cents, revenue 66 cents; all arrivals, all weight classes, cost 67 cents, revenue 56 cents.

Respondents' Exhibit No. 254

This exhibit consists of two sheets and is entitled "Cattle and Calves Only—Analysis of Commission Revenue Resulting from the Application of Tariff No. 3 to 1931 Volume by Arrival Accounts, Weight Classes, and Elements of Charge [fol. 1481] (from Tapes of 14 Firms.)"

This exhibit shows that the extra charges are 2.52 per cent of the total commission charges for these 14 firms, and the headage charges represent 97.48 per cent of the total

commissions derived by the application of Tariff No. 3, if that tariff had been in effect during the year 1931. I utilized the gross proceeds method in the distribution between weight classes. The effect of the utilization of that method of distribution as to weight class 1 of cattle delivered by rail is to indicate a cost of 22.6 cents per head in respect to that class, and a revenue of 27.6 cents per head on a headage basis, or a total revenue of 29 cents per head when the extra service charges are spread between the different weight classes.

In respect to weight class 2, the cost was 47.95 cents per head as against a total revenue, including service charges, of 51.04 cents per head, and as to weight class 3, 82.67 cents per head as cost against a total revenue, including extra service charges, of 66.84 cents per head.

As respects drive-ins, the cost was 33.05 cents per head in weight class 1, compared with a revenue of 34.37 cents per head, and for weight class 2 the cost was 90.58 cents per head and the revenue 66.76 cents per head.

In respect to weight class 3 of drive-ins the cost was $1.4879 per head against a revenue of 72.35 cents per head. Weight class 3 for seconds showed a cost of 64.71 cents per head and a revenue of 36.55 cents per head.

[fol. 1482] There is nothing new about the use of arbitrary bases for apportionments in cost accounting practice. The word "arbitrary" may not be construed as being arbitrary in the sense that they are unreasonable and without a sound recommendation. We do not know and so far as my own experience is concerned I can say there has been no way to find out whether these bases that I have referred to as being arbitrary are actually reasonable or unreasonable. We don't know whether they approximate the fact or whether they really sweep rather wide of the fact. That is due to the condition that the operating costs of this industry have never been put on a basis, so far as I know, certainly not at this market, which gives you the accumulative benefit of an analyzed experience. As a consequence, I feel that wherever it is necessary for us to use methods of proration upon bases such as the sum total of heads and drafts we can't be sure that the apportionments made on these bases are reliable. I have used the word "cost" in my analysis in this case in the sense that it represents as nearly as we can ascertain it the total present values ex-

pressed in dollars which these agencies sacrifice in providing the service to the public. That cost is not representative wholly of cash moneys paid out, but it is representative of a figure applicable to the year 1931 which would result if all these values sacrificed or consumed in providing this service were reduced to a cash basis on the terms and under the conditions under which such values have been reckoned. In arriving at that amount I have taken at their face value [fol. 1483] the owners' services as they have been appraised by the committee. I feel that this aggregate cost is a figure upon which we may depend without any great danger of being seriously misled. When the cost is broken down to the three species, we get out where the ice under our feet is a little bit thinner, for the reason that the distribution of the salary and wages to the species accounts is based entirely on estimates made by the respective firms as to the percentage of the time of those workers who were engaged in servicing two or more of these species. These agencies have not kept a daily record of their personal performance. No record which I know of has been kept by any agency which affords an historical record of the manner in which the various employees and owners spend their time from day to day with respect to its devotion to the several species which they may handle in their business. The time of some of these men is devoted exclusively to one species and there is enough of this 100 per cent species distribution to warrant us in having a limited amount of confidence in the species cost. That cost is not made up entirely of salary and wages, but the manner in which the expense element, other than salaries and wages, is disposed of in such as not to seriously weaken this limited confidence which I have mentioned as being warranted in the case of the species cost. When we go into the third step of this performance and undertake to further break down and distribute the aggregate species total cost to the four selling [fol. 1484] arrival accounts, and subdivide it as between selling service and buying service, we are again confronted with the fact that we have only somebody else's opinion as a basis for that distribution of salaries and wages expense. The buying and selling services are generally handled in common by the same individual. The selling service predominates and requires the major part of the time, but from the nature of the buying service it is my estimation

that any estimate a man may make of the subdivision of his time, as it was devoted to selling and buying services, is going to be a pure guess. When we undertake to break the selling element of this cost down to the three arrival accounts, we are again confronted with a lack of basic information which is based upon actualities, which enables us to distribute that expense in a way which inspires our confidence. It is my opinion that we cannot safely rely on the figures which I have set forth or upon those which Mr. Bachmann has set forth as being truly indicative of the actual cost of handling the shipments in those different accounts. I do not mean to make a wholesale disparagement of these efforts. I think the information is informative in a degree despite its infirmities. If the figures of either myself or Mr. Bachmann were put into the hands of someone who was not familiar with their frailties and he proceeded to use them as though they were valid and possessed of all integrity, a great deal of damage might result from their use in that fashion. We have taken these costs only as far as the arrival account. Mr. Bachmann has gone the [fol. 1485] full route and broken the arrival account cost down to a single and plural ownership, straight and mixed, rail shipment, and so forth.

A comparison of Mr. Bachmann's differential study and my Exhibit No. 206 will show that there is a marked disparity in the unit costs of individual firms as they relate to the same account. We know that the differences in the volume handled, in its consist, in the size of the consignment, in the character of the animals contained in those consignments which regulate the number of drafts into which they have to be partitioned, and in the methods of operation employed by the respective firms, all tend to cause a variation in the unit costs. It is highly important that we should hark back to the bases which underlie the derivation of these costs and remember the several stages of estimating arbitrarily, prorating, and this and that and the other thing that they went through before they arrived in the form in which we propose to use them. It is axiomatic in the cost finding business that the integrity of unit costs which have as their constituents several different elements of expense that the expense classification must be uniform and standardized before there can be expected to be found uniformity in the aggregate costs expressed on a

unit basis. In this industry we have no standard classification of expense accounts.

A serious disadvantage in Mr. Bachmann's figures is that there is no uniform basis for the most important element of the cost, which is the salary and wages expense. [fol. 1486] I believe that Mr. Bachmann has utilized every particle of information that was available to him in attempting to set forth the costs computed according to the methods and practices which he has adopted. I am sure that we have undertaken to do the same thing. The fault is in the information and material which the compiler has to work with. The information has never been recorded or assembled or classified with the primie object that the material would be used to fabricate unit costs for rate making purposes. There are other things beside cost which enter into the fixing of just and reasonable rates, but among all the things that are to be considered it seems to me that that factor of cost is one of the most important, because a rate can hardly be said to be just and reasonable which is not at least compensatory, if not within its own self, at least compensatory when its operation is conjoined with the operation of other rates concurrently applied and reciprocal in their relationship, that the joint result of these rates should be at least compensatory. In many industries besides this one we find oftentimes a very considerable proportion of the aggregate cost of doing business to consist of what accountants call stand by expense. It is the expense which emanates from standing by, being ready, able and willing to serve. We have that sort of expense in considerable proportions in this case. The rail cattle business occupies not exclusive but inclusively, the first two days of the market week and very little of the remaining days [fol. 1487] of the market week. The drive in business, on the other hand, patronizes the market the first two days of the week as well as the other days of the week, with the exception of Sunday. In the two studies which I have made of the costs on this market, it has not been possible to segregate or deal intelligently with this stand by time and the stand by expense which seems to me to be a very important factor in this cost study. So far as my understanding goes respecting Mr. Bachmann's study, he has not been able to comprehend that situation either. These matters are by no means a complete inventory of the problems and

difficulties which attend this cost finding subject in this particular instance. My own conclusions are that Exhibit No. 252 which shows a comparison of the costs and the revenue produced by Tariff No. 3 and Tariff No. 2, respectively, is substantially correct. I think that the loss or gain which would develop with respect to each of the three species by combining the total selling and buying services would be an approximately correct appraisement of the relation of any profit or loss to the gross revenues for those species, but as respects the showing in this exhibit for the individual arrival accounts under each species I would not be so certain that the species loss or gain, as the case may be, were attributable to the arrival accounts in exactly the same proportion as the figures shown on this exhibit would indicate. In arriving at this total aggregate loss, as shown on Exhibit No. 252, I did not include as expenses of operations the amounts representative of bad debts, loss on loans, and otherwise. I endeavored to compare the cost of the service [fol. 1488] with the revenue earned for performing that service, and purposely excluded from consideration all debits or credits that were not germane to the operating costs and operating revenues.

I paid no attention to non insurable hazards in respect to the accrual or estimate of any loss which might arise therefrom. These figures of mine are not an exposition of the complete cost of doing business. They are an exposition of those several elements of that cost which were in this instance measurable and obtainable. There are unquestionably some other elements of cost which are not included in Mr. Bachmann's statement of costs or mine. Some of these expenses are indicated by losses which have been charged off to profit and loss and being the balancing of accounts, I have not considered properly includable in my cost because they are not a correct measure or even indication of the proper degree of cost of bearing these hazards. They are merely the indication of the maturity of certain of these hazards representing or calling for a direct money outlay. They are not a correct measure of the hazard itself. It would be rather deceptive and perhaps misinformative to include them in cost and then say that this cost was complete.

If the loan business were to be considered as part and parcel of the livestock commission agency's service, its incorporation in the service category would change the Secre-

tary's figure. I do not know whether it would increase or [fol. 1489] decrease because you would have to consider the revenues or profits from that service as well as the cost. Both sides of that transaction would have to be considered.

It is considered as an extraneous operation and omitted from consideration entirely in my total aggregate cost and revenue resulting deficit. Inclusion of the loan business would bring about dissimilarities and disparities in the relative situation of individual agencies. Some of them do not engage in the loan business. In my 1929 study, I included insurance accruals relating to such liability as may be imposed upon the Respondents' arising out of losses of livestock while the livestock was in their custody. The level of the rates was so high as to seem to me that the rate quoted was not quite fair to use in determining the cost in rate making purposes. Since it seemed to be the case that it was cheaper for the agencies to carry their own insurance, than it was to hire the insurance companies to carry it for them at these rates, I left that out. The only item which I have included as representative of what might be termed "going concern value or a return thereon" is the return provided for on an 8 per cent basis on the investment in methods and practices employed in yard and office as estimated by me.

The hazard of personal injury to owners is included because the insurance premiums, or the premiums for that insurance protection are based upon the salary and wages of the ordinary payroll. It is not a payroll here because it [fol. 1490] includes appraised salaries of the owners. The basis for our workman's compensation accruals is the combination payroll of owners and non owners. The owners being on an appraised basis is my understanding of the correct measure of that cost. As we get away from the aggregate cost of all services and proceed toward the farthest refinement of that cost, I think the reliability of the figures decreases.

I made no attempt to reaudit the books of any of these Respondents or revise to any extent the figures represented by the exhibits introduced by the Government under the Government's general Exhibit No. 114. Some of the Respondents who are individual properietors who own their own automobiles frequently, while keeping an accurate record of the transactions of their customers, fail to keep adequate books and records as to their expenditures, treating them in fact as personal expenditures. That makes it im-

possible for the auditor to get at results which he could be certain were complete facts. Presumably that would iron itself out in the total of all the audits and the importance of the omissions would be less and less.

The quirk in the cattle unit cost on Firm No. 16 is due to the erroneous apportionment of expenses which were distributed on the basis of drafts, where the relative number of drafts had an effect upon the apportionment bases. Such distributions are erroneous for the reason that under cattle drive ins, the number of drafts used was 448, whereas the correct number of drafts was 1,448. There was a typo- [fol. 1491] graphical error in Mr. Bachmann's statistics, which was not discovered until after all the costs were set up.

The drive in business for Firm No. 16 got one third of the charge that it should have had, and the portion which it escaped went into the rail account and seconds account.

It was the forepart of August that I came in Kansas City instead of the forepart of September. Firm No. 8, one of the agencies which is a member of the Exchange was not included in my cost study.

Cross-examination:

Exhibits Nos. 206 to 254 are based upon and represent mathematical computations from the so-called blue audits which have been put in evidence under the general number of Government Exhibit No. 114, the only exception to the statement being that these exhibits comprehended the owners' salaries on an appraised basis. The exhibits relating to the analysis of the account sales were not taken from the blue audits.

Certain exhibits numbered between 206 and 247, which are the cost exhibits, particularly those relating to invested capital, do not rest on the blue audits. The development of invested capital rests, in part, on the data taken from the blue audits and in part on independent developments extraneous to the blue audits. That subject is dealt with on exhibits Nos. 239 to 244.

It is intended that the figures in Column C of Exhibit No. [fol. 1492] 239, having to do with Exchange memberships, should be the same as in Mr. Bachmann's cost study. The same is true of the — for furniture and fixtures and equipment in the Column D. Working capital under Column G

is intended to portray the working capital employed on the form of either cash or established credit to finance the sales and purchases transactions during 1931, but the amounts shown in this Column G are estimated amounts.

The value of methods and practices appearing in Column H in Exhibit No. 239 was taken directly from my 1929 study. There are a couple of new firms appearing here which were not comprehended in the 1929 study and the figures have been supplied for those firms, and the figures provided in the 1929 study for the firms that are not covered by this study have been left out. Everything that I had to say at the formeer hearing with respect to the value of methods and practices in my 1929 study applies with equal force to the same thing in my 1931 study. While there has been some change in the general level of costs of things since 1929, it does not seem to me that there has been any perceptible difference in the general level of costs of work required to produce a thing like this since 1929.

I am quite sure that none of these methods or practices are copyrighted or patented. In this particular case these firms are common users of a very extensive and intricate piece of property. They use it conjointly and unless the [fol. 1493] rate payer is to be burdened with an avoidable expense, and perhaps other charges as well, that joint use must be on an efficient basis. In the control and administration and handling of this business, like any other business, there are many ways and means and methods that may be employed in handling it. They all cost money. As experience builds up and we learn of certain ways and certain methods that are most efficacious in getting results, that are most economic from a standpoint of expense, those ways, means, and methods become tested and proven and standardized and finally adopted. They have a value attaching to them which is a part of the property right possessed by the user of them and the possessor of them. They are not quite in the same analogy as the method we would use in dressing ourselves, putting on our shoes first or last as the case may be. These are special methods and processes, and without them it seems to me quite obvious that anyone or all of these agencies would merely have an opportunity before it to do business, an aggregation of individuals to perform the manual operations, but still it would not have an organized business. A firm would have no means of con-

trolling that business and certainly without these methods and practices which they have proven and tested and finally adopted, it would cost more to handle the business than otherwise.

In my work I may go into a business and make a suggestions for improvements in methods of doing business which greatly decrease the cost of doing business. There is a [fol. 1494] value attaching to this improved methods, which manifests itself in a reduced cost of doing business. The basis on which the estimate was made comprehended the firms collectively. It would not be possible as a practical matter to set up a system of yard practices and methods for an individual firm without being influenced or guided, or at least having analyzed and obtained the workings of the methods and practices used by other firms in which this particular set of methods and practices would have to mesh, and they would have to cooperate in making this estimate.

The total sum approximated something like $50,000.00 which was apportioned over the individual firms on the basis of their volume or the extent to which they participated in this aggregate reproductive cost expenditure. There arises here the question of the extent to which the value may enure to these different firms in the event their participation in the joint use of this thing should decline. It might not be quite so valuable if it could not be used to its capacity, but I have not undertaken to make any adjustments on that account. I think it would be one of the factors, probably not treated as an entity and specifically evaluated upon which they could realize in the event they sold their business. If Firm No. 1 sold out to Firm No. 4, I am not sure that Firm No. 4 would be willing to pay Firm No. 1 something for the methods and practices, because what he would be willing to pay would be determined perhaps by the conditions under which the sale was made or the purchases obtained. This value which I have under- [fol. 1495] taken to find here is not what we might call a commercial or bargain sale value. It is a means adopted in the attempt to measure the non physical assets which this particular firm possessed and used during the year 1931 or during the year 1929, and the value is measured, not by what it would bring on the open market under conditions of a normal bargain and sale, but rather what it

would cost to reproduce it if you did not have it and yet found yourself obliged to supply yourself with it.

In mentioning the sum of approximately $50,000.00 I had in mind the yards methods and practices which are not inclusive of other similar items which attach to the office. The balance of the value attached to this non physical property shown in Column H of Exhibit No. 239 was arrived at by considering the circumstances of the individual firms and involves no apportionment between firms. The figures in Column H of Exhibit 239 cover yard and office methods and practices. I did not use the proceeds from the sale of animals as a basis for the distribution of any of my costs in my 1929 study.

I would say that the sales value of the animal does not relate itself in any way at all to the cost to the market agencies in selling them.

It is to be understood that gross proceeds or sales value has not been used in any general way in distributing the costs set forth in these exhibits except as a basis for an ad- [fol. 1496] justment as between the selling arrival account cost and also on Exhibit No. 253 where a very special use is made of it. In the general cost study, gross proceeds value does not appear as a distribution factor, except in connection with the shift of costs between the arrival account within a species out of respect to the relative ability to pay as measured by gross proceeds. It does not enter at all in my distribution of costs as between species.

The bracket appearing at the bottom of the last sheet, which would be No. 9 of Exhibit 207, shows the unit cost per head adjusted, the unit cost per head unadjusted, and the affect of the adjustment all expressed in unit cost per head. The effect — that adjustment was to take 13.74 cents per head out of drive ins and 16.23 cents per head out of all seconds and 12.79 cents per head out of split consignments with the result of adding 3.71 cents per head to the rail rate. The effect on the head rate on rail cattle is much less than the counter effect on the credit of the head rate of drive ins, seconds, and splits, because there are a great many more head of rail cattle. In that way it would show a greater proportionate cost of selling rail cattle then is actually the case, assuming that the cost figures are actual cost.

When an accountant is faced with the necessity of making an arbitrary distribution, he is compelled to use judgment in an effort to find a basis or bases which will, in his opinion, as nearly reflect cost producing factors as is possible under the circumstances. There are certain logical [fol. 1497] checks upon the kind of judgment that is used. There is a certain judicial discretion that must attach to a cost accountant's work unquestionably. Quite often the cost accountant must obtain that information from people actually engaged in the business which is being studied.

I think the office work in a commission firm centers around the consignment. The consignment represents an owner, the correspondence is with the owner, and there are various other reasons why it centers around the consignment.

To some extent the amount of office work, per consignment, will be effected by the number of drafts in that consignment, perhaps not in exactly the same ratio as the number of drafts may increase in one case and decrease in the other from a general average. It does not mean that a consignment with three drafts is going to cost three times as much to handle in the office as a consignment of one draft. Where consignments have five drafts per consignment as against 1.8 drafts or drive ins and 2.4 on seconds. When office salaries and office expenses are distributed to arrival accounts on the basis of drafts, that naturally tends to throw more cost to the rail consignments than it would to drive in consignments. I think it is the best available basis for putting the species cost down to the arrival accounts.

I know nothing about the method employed by the Secretary of Agriculture in the so called Omaha case for the purpose of ascertaining the reasonable cost of owners' salaries.

[fol. 1498] "Q. Well, the method employed, as I understand it, Mr. Roberts, to ascertain or determine the cost of the services of the owners in performing the services for which the commissions are charged, was basically in principle that if an owner engaged in the selling of cattle, for instance, his services in that respect were worth the same as what he would have to pay on the bargain basis to employ a competent cattle salesman. Is that owner also engaged in the management of the business, that is a proportion of his time he had allocated or distributed to manage-

ment, then, the value of that portion should be determined on the basis of what was actually being paid to managers in that same type of business at the same place, and similarly as to any other service that portion of his time might be devoted to, and then when the rates were determined finally they exceeded the aggregate of the cost, there being a margin between the aggregate cost, speaking of unit costs, now, and the prescribed rate which margin might cover the so called entre preneur's profit, what would be your criticism, if any, of that method of determining the value of the owners' services?"

My understanding of just what has been said enables me to say that my personal objections to such a procedure would be that it is wholly inappropos to the issue at bar. [fol. 1499] The effect of it would be to undertake to regulate the level of the rates in a way which would compensate the owner in a measure which was arbitrarily determined and I would say superficially determined. My belief is that it is impossible for the Secretary or anyone else to arrive at a reasonably correct approximation of a worker's service value when that work- is an owner, manager, or executive of the business, we might say the moving spirit of that business by integrating the amounts which are comparable with sums paid for service rendered by another which is in some part and perhaps only in a very small part similar to part of the services rendered by the owner. My observation is that the chief executive or the owner or the manager of the business, his service value to that business is not measured nor measurably by comparison of what it costs to get someone else to do the same physical labor that he might perform or what it would cost to employ several individuals perhaps to perform different kinds of physical labor which he might perform. The chief value of an executive to the business or of the entrepreneur is his ability to obtain business by virtue of his standing and his reputation and his contacts and his experience and all of these attributes which are inherent in the man who commonly is head of the business, and to obtain an opportunity to serve others at a profit. In the livestock business, one of the most expensive things is the procurement and retention of a volume of business. I fail to perceive wherein the process described there would be any evaluation of the

[fol. 1500] faculty or the ability which the owner had to attract, procure, and retain a volume of business. The owner or co-owner is not only the moving spirit of the enterprise, but he personally rendered a service which perhaps could or could not have been replaced by another. In the event he was unable to render this service, there would have perhaps been no opportunity to have rendered such service if somebody else were substituted for him, because the opportunity to render that service was created by the confidence that his customers had in him personally, especially because of that feature of personal service worth, not human value, as I understand it, and if these appraisal figures had been offered to me as human values, I would have rejected them, but these values, as I understand it, have issued from the appraised values of personal services rendered. It seems to me that it would be impossible in almost any case to arrive at such a value attached to a particular individual wholly by a process of considering what you could go out and hire a man for who would sell an equal number of head of cattle in a given period of time or who would yard an equivalent number of cattle in a given period of time, and attempt to arrive at the value of that man's services in that fashion, because even though you might find some individual who was on a salary basis that you could accept his salary as a criterion who handled the same number of cattle, perhaps was able to sell them at prices equally as favorable, you would still be confronted [fol. 1501] with the probability or at least the possibility that if you substituted these men one for the other, the man substituted for the owner whose services you were seeking to appraise would not have the opportunity to serve the same customers that that man would have, which would completely alter your situation. In measuring the ability of these owners to attract business to their firms, and the value of their personal contacts, I would pay a great deal of attention to their record of past performance in that particular. I would not say that there is no process of measuring it in dollars and cents. If we had adequate records, I think it would be merely a statistical process to determine the average cost of attracting units of business. Unfortunately, we do not have the records.

In case an owner did the yarding, I would have to put it up to somebody else to determine for me what this man's

services were worth. If he had no salary, there is nothing in the books to indicate the extent of the cost value of his services and I would be helpless. That is the condition I found myself in regard to these so called owner workers. I think it would be reasonable to say that for the function of yarding alone that man's services were worth what the firm could employ an equally competent yardman for, at whatever value might be attached to that man's entire services. I accepted the appraised values of owners' services without going behind them. It is true, as my exhibits here show, that there is a variation in the average gross pro-
[fol. 1502] ceeds per head for animals of the same species and animals in the same species and in the different arrival accounts of the various firms. These variations are generally not radical. There are differences in the per head value that run as high as 12 or 15 per cent in the case of cattle. It is quite possible that a particular patron may sell some fat steers at a relatively high price, and yet that price be less than the cost of production to him. It might be that a patron may have sold some inferior cattle at a very small price, and yet that would represent a good profit over what the cattle cost him. That is why "as measured by gross proceeds" is tacked onto the end of it there.

It seems to me that the introduction of the gross proceeds factor in my cost study has some relation to the reasonableness of the higher rates being on the heavier animals, if we are willing to concede that the ability to pay as a principle of rate making is properly to be recognized in a case like this. Our studies of the 1931 accounts sales have indicated that the head value of the animals sold increased progressively from weight class 1 to 3. In the case of cattle the average for 46 firms shows the average head value for class 1 cattle and calves would be $15.95 per head; weight class No. 2, $35.22 per head; and weight class No. 3, $59.57 per head. I can not say that I know of any other reason for placing a higher rate on the heavier animals. There has been a contention on the part of some of the operators that the more valuable animals are sold by the more expe-
[fol. 1503] rienced and generally higher paid salesmen. I am not personally able to say whether the more valuable time is spent on the animals having a higher market head value or not. I have been told that there are cases where heavier animals are not the more valuable.

As to whether the rates should be directly related to value, the situation is a little bit complicated. In the case of cattle we have about 85 per cent of our volume that arrives by rail, 14 per cent is d·.ve ins, and about one per cent is seconds. If any one or any two of these subdivisions of the total volume were eliminated, the remaining subdivision would have a tremendous cost to pay if it continued to patronize the market enjoying anything like market facilities equal to those maintained at the present time. Their interest in maintaining a market condition precedent to which is to defray the expenses incident to maintaining that market is a common problem. It is a common responsibility and their benefits are pretty much on the same relative level. We had that situation in the back of our minds and then approached this matter of the principle of the ability to pay out of a sort of a maze of difficulty that we were seeking to extricate ourselves from, and I believe that the concept of the problems are somewhat different than if we just approached it as a matter involving only ability to pay, leaving service costs and leaving joint responsibility and all that sort of thing out of the picture. What I have been able to learn about the business rather encourages me to [fol. 1504] believe that the successful way to make livestock commission rates and the equitable way would be to put them on a percentage basis, but there are no doubt many good reasons why that should not be done. The value of the service rendered and the ability to pay for it are one side of the equation in making rates, and on the other is the cost of the service furnished. If we ascertain our costs here, we would probably find that while there might be some greater burden resting upon the more valuable animals, because of the fact that their sale was entrusted to the more experienced and higher paid men, we have spent a little more time per head on them than might be done on less valuable animals sold by more inexperienced men. Even if that refinement were made in the cost, the chances are that we would still find that our costs suggested rates which were perhaps impracticable for application to the different arrival accounts. The drive in business is of such quality that it would probably be unable to successfully bear the full cost of the service furnished it, if we were able to arrive at those costs with the most convincing accuracy. Assuming that that is true, and that the traffic could not move under rates which were confiscatory and that the

traffic was withdrawn from the market entirely it would throw the entire burden presently borne by the drive in business upon the other business at the market. The depression and the things that go with it have led me to believe that they were probably in what is commonly called a vicious circle about those rates.

[fol. 1505] The volume has fallen off, and with the lesser volume we have a greater unit cost, and perhaps the more we charge for the service on a per head basis the less volume we will have. In a commercial industry when a firm gets into that sort of a mess it oft times has to make an initial sacrifice in the hope of making an ultimate gain. They have got to do something to build this volume back up, because we can not depend on the level of the rates alone to derive profit from the business. The margin of profit in a rate does not by any means determine the profits derived from the business. It is the number of times that that part of the rate is turned over that measures the success of the business from a pecuniary standpoint.

If the rates were adjusted with respect to the apparent ability to pay, and if the burden of the service rates on the volume with respect to its ability to bear it, without any particular hardship on one class of business or the other, it would perhps permit the revenue gained to be sufficient to enable the business to be carried on to afford a reasonable compensation to the workers and to the investment employed, and might successfully build up the volume to the point where the stringency would be removed, and in the meantime the phenomenon resulting from the change in the rates was regarded and studied, and if we proceeded to get our house in order as respects account keeping in another year or two we might be able to get something pretty sound out of these studies. The costs perhaps give a pretty gen-
[fol. 1506] eral indication of the relative level of the service costs and the rates. They serve to locate to the species in a fairly dependable way where the greatest losses may be or where the profits, if any, may be earned at the present time. Further than that I do not know just how helpful they would be to me if I had to start out to make these rates.

If the expense could not be reduced in proportion to the sacrifice of the drive in volume, even then revenue is derived out of the drive in volume and goes in exactly that amount to decrease what would otherwise be operating losses. We

are face to face with the principle that I have tried to identify here of recognizing in the apparent ability to pay the fact that we have drive ins here whose costs are disproportionately high as compared with rail arrivals. If the effect of burdening them with the rate predicated with due regard to that cost would so discourage that business that the market would be deprived of it, the rail arrivals would certainly not be benefited by such an outcome as that, because the expense that the drive ins now takes care of through such revenues as they produce would fall directly on the rail business. If the reverse situation should happen, the drive in business would be pulverized by the weight of expenses that would fall on it.

Wherever I used drafts in these exhibits comprising my cost study they were taken from Mr. Bachmann's computation of drafts. The rates on these several insurance accru- [fol. 1507] als shown on exhibit 234 were supplied me by Mr. Gage in 1929, who obtained them from representatives of the local insurance companies which carried the insurance that were then carried by the agencies. Their applicability was verified or the rates were changed as may be proper to fit the 1931 conditions. Mr. Stebbins, the secretary of the livestock exchange, was good enough to make that verification for us and advise us of the results. I understood he consulted the same sources from which the information was obtained in 1929.

It would be practicable and it seems to me it would be highly desirable that the market agencies should be supplied with a standardized system of account keeping through which their operating expenses would be distributed, and that they should be required in so far as that is feasible to record on their books of account all expenses which are appurtenant to their market agency operations. This chart of accounts should be designed with the object of yielding the information that would be used, if needed, for cost finding purposes. Along with this chart of accounts they should also be required if that were feasible to keep a record of their volume so that having determined the cost of functions of work or components of service you would have available the units of performance covered by that service. There might be very practical difficulties encountered in introducing it into use.

I think one of the principal advantages would be that [fol. 1508] such a system would disclose in what services

money was being made and in what services it was being lost. It would greatly aid the Secretary in administering the law and it would provide the agencies with those facts and figures which could be used by them in defense of their own interests.

If we undertook to keep our time and expenses distributed in a way so that we would arrive at a cost of each of the services rated in Tariff No. 2, I think we would be breaking those costs down beyond the limit of practicality.

The industry is not accustomed to account keeping and it knows nothing whatever about the principles of cost finding. It would be necessary to start out with a relatively simple plan which might be expanded and refined and developed after a year or so as they made progress in the art of keeping accounts and making distributions. It is my thought that the accounts so kept would be either directly related or susceptible of being adapted to the tariff provisions. I would say that one system of accounts could probably be applied at all markets because the principles which underlie the market operations of these agencies are identical.

(Whereupon witness asked that the caption of column E of Exhibit No. 234 be changed to show "Schedule 12-D" instead of "Schedule 12-B.")

The salaries and wages should be on the basis of service value rather than on some other basis in the event they [fol. 1509] were to be used for rate making purposes. In arriving at costs which are in their nature composite costs of a number of businesses, it is necessary with any computation of salaries and wage expense for each of those businesses to have some uniform line, in the sense that the salaries and wages covered the same sort of a consideration received. For example, a supernumerary pensioner who renders no service, but who is receiving $4,000 a year, should be deleted from the cost base, because there is no service rendered in exchange for the money, and it should not be charged to the service user. The salary of an owner which is determnied by the earnings of the business would disqualify itself for inclusion in the rate making base because it is regulated not by the value of the service rendered by the worker, but by the yield of the rates which are in question in the case.

In order to achieve that uniformity, it would not be necessary to appraise the value of the employees for the reason that employee's salaries are generally on a bargain basis, and there are certain economic reasons why those salaries ordinarily would not be seriously inflated or deflated. The economic situation takes care of that rather satisfactorily, although there might be cases where out of sentimental or other reasons the wages paid to employees were unreasonably high or unreasonably low. It is my opinion that if an appraisal were properly made for part of the workers, and the salaries of the other part of the workers were taken on a bargain basis, there would be uniformity [fol. 1510] as to all salaries for rate making purposes. In making such a proper appraisal, the only essential thing is the service rendered by the individual whose services are being appraised. I know of no standard formula by which that appraisal might be arrived at.

I would think that [illegible]wledge of the appraisers of the service being rendered by the individual appraised would be necessary to a proper appraisal. If that lack of knowledge were as exclusive as it would appear to be I would say that I would give no weight to the appraisal. Stand by time or expense, means time or expense which is necessarily devoted to the enterprise, but which may or may not be utilized. Stand by expense would be no less real if no utilization were made of it. It would be equally real if some partial use were made of it. A significant thing about it is that it is an inescapable expense. It involves standing by being ready, able and willing to serve if the demand for service materializes. The greater the demand for the service, necessarily the less utilized stand by time and expense there would be. In this industry the stand by time is substantially seven days a week.

Let us assume that the first two days of the week are fully utilized to their productive maximum and that the remaining five days of the week entail, in one degree or another, depending upon the extent of its utilization for practical purposes, a stand by expense. The thing that I had in mind was this stand by expense which is given [fol. 1511] to all the services that are rendered on the market during any period of time. When costs are ascertained and considered on an annual basis that covers stand by expense. To the extent that the appraised salaries were

properly appurtenant to service, these salaries entered into the ascertainment of that deficit of $356,347.37 shown on Exhibit No. 252. The amount included in the deficit was $597,775.00 less the elimination of $11,838.17 as shown on Exhibit No. 211.

This deficit is related to "net owner income" in that if the owner were compensated for his services on what has been found by these appraisal boards to be an adequate and fair compensation instead of taking money home the owner would have to bring money from home to the office to defray his expenses. In order to pay himself his own salary and pay the other expenses of his business, he would have to borrow this much from his wife to meet his obligations.

On sheet 3 of Exhibit 211, in Column C, the name of Mrs. T. S. Moffett should be substituted for the name of Mr. T. S. Moffett.

With respect to the commissions shown on Respondent's Exhibit No. 252, some firms show a greater loss than other. It can be ascertained from the exhibits whether some firms show a profit. In all cases save one there is a very direct connection between the appraised salaries and the profit or loss of a firm.

If the appraised salaries had been larger, the losses [fol. 1512] would appear greater.

It was my intention to delete from my cost study all losses arising on account of bad debts and losses in the loan business and salaries and other expenses connected with the loan business. They were not the cost of rated service.

Elements of cost divide themselves into two general classes. One element relates to the disbursement of cash or equivalents which are matured expense, and the other element relates to expenses which are of an accruing nature and which have not yet matured. With respect to the first class of matured expense, I know of no items which are omitted from my costs. With respect to the second class of cost elements, there are a couple of omissions. One of them is the expense of carrying such hazard as attaches to unprotected or uninsurable loss incident to having livestock in custody. The other is the hazard of losses which are unpredictable and perhaps uninsurable incident to financial losses resulting from the handling of sales proceeds and

remittances on account of purchases made. I know of no very specific items which are of any serious import.

My computation of the accrual for workmen's compensation insurance was based on the appraised salaries of the owners plus the bargain salaries of the employees. It was based on an amount which would represent the payroll, if the owners were carried on the payroll at the amount of their appraised salaries which is chargeable against the commission agency services. Economic conditions have not [fol. 1513] changed the general principles which I discussed in my previous testimony.

My test to ascertain the difference in income produced by applying Tariff No. 2 and Tariff No. 3 to the 1931 business related only to the selling business for the reason that the buying schedules were substantially unchanged, and when I had ascertained the difference in dollars and cents, which would result from the different selling schedules, I applied that to the selling business in order to obtain a percentage of decrease. If this Exhibit No. 252, it will be observed that in the restated gross income shown on Line 3, the buying service commissions are brought down from Line No. 1 without change. The selling service commissions derived under Tariff No. 2 are adjusted by applying percentages of decrease discovered to have resulted from the application of Tariff No. 3 of a similar volume of business in 1931 as developed on Exhibit No. 251.

My percentages of decrease represent the percentages of decrease in the selling business of the 59 firms and not the percentage decrease in their entire market agency business. The time study covered salesmen's and yardmen's services on the yards. All that data, both time cards and sheets showing the data handled during that time, are in my office in Chicago and I will be glad to make them available if desired.

(Whereupon it was agreed that it would be satisfactory for Mr. Bachmann to examine these records in Mr. Roberts' [fol. 1514] office and make a computation from them and offer that computation as evidence in the record at the time of the oral argument in this case with the understanding that such offer would be subject to any objections that respondents might choose to make and subject to the right of respondents to cross examine Mr. Bachmann.)

I have described in my direct testimony analysis of account sales covering the year 1931, which were made for the purpose of my test of the results to be obtained by applying Tariffs Nos. 2 and 3 to the business of that year. I have those papers in my possession. They consist of approximately 34,000 letter size sheets on which the data appearing on account sales were transcribed and something over 300,000 punch cards on which the data were again transcribed for sorting and tabulating purposes.

A test of the tariffs could be made from the information on account sales.

We used those analysis sheets and the information contained on them to derive the gross income which was obtained by the use of Tariff No. 2 in the year 1931 and would have been obtained by applying Tariff No. 3 to the business of that year.

If the Secretary were to use these sheets and cards for the purpose of testing the accuracy of my work on Exhibit No. 251, I would expect no compensation whatever. If he were to use them for some other purpose and with the object of saving the Department expense, I would think that some reasonable amount of compensation, at least sufficient [fol. 1515] to reimburse me for the out of pocket expense that might be incurred, in order to so accommodate him, would not be wholly improper.

(Whereupon it was stated by counsel for respondents that from the standpoint of respondents he would be willing, upon terms agreeable to Mr. Roberts, for the Government to have access to these analysis sheets and punch cards, which are Mr. Roberts' property, without objection from respondents for the purpose of testing the tariff. It was agreed that Mr. Roberts' records might be used in court without being introduced in evidence at any further hearing provided that it is done with the knowledge of both the Government and the respondents; that is to say, if the Government should make reference to these records to test an order, it would furnish a copy of the results to respondents prior to its use in the courts and the respondents would expect to do the same in so far as the Secretary is concerned.)

Redirect examination:

It is true that each one of these gentlemen, the value of whose services was appraised by the committee, devoted a

certain part of his time, 100 per cent, or in some lesser degree, to his respective agency. Now, my conception of the matter is that we want to know the fair value of that time, which was devoted to the agency, which was presumably employed solely in advancing the interest of that agency. It may be true that 100 per cent of the time so devoted was not employed at its maximum productive ca- [fol. 1516] pacity but that was no fault of the man himself. I would not say that his time was to be appraised strictly with regard to the actual amount of production because the actual amount produced was perhaps regulated or governed by circumstances over which he had no control. If he was 100 per cent of his time available standing ready, able, and willing to serve, that is of essential consideration in the appraisal of the value of his services rendered. In some instances the setting into my costs of the amount of the appraised salaries reduced the loss shown as to the firms to which it related by Mr. Bachmann's cost study. In the majority of instances it increased the cost.

If Mrs. T. S. Moffett did not actually devote the full 100 per cent of her time, as indicated by the questionnaire, to the business of the Moffett Commission Company in the year 1931, there should be an elimination from my costs in respect to that firm.

When we include in the cost, as I have done, all the cost expenses that attach to a full year's operations, my statement becomes true that stated on an annual basis all of the stand by expense is comprehended in those costs.

Recross-examination:

If it is conceded that $6,000.00 was a fair appraisal of Mrs. T. S. Moffett's services as a clerk, if she did nothing [fol. 1517] other than clerical work, it was a little high according to the present conception of the worth of clerical services.

(Whereupon the witness was excused.)

Mr. J. C. Swift, a witness called by the Respondent, after being sworn, testified as follows:

I testified in a former hearing and now occupy the same position with the Swift and Henry Livestock Commission Company which I occupied then. I am the owner shown as number 59 in the audit. Since the last hearing there has been a general adverse change. The size of shipments has decreased, the unit is smaller, and the labor is greater. We had some increase in expenses, despite the depression, among these are those on account of postage, checks, telephone and telegraph, and taxes. The breaking up of shipments into smaller units has necessitated more labor, the use of more stationery, telephones, and telegrams. There has been an increase in the amount of service which it is necessary to render. This has grown out of conditions which exist and out of increased competition from other markets. Under conditions as they now exist patrons are very careful to get the best possible advantage from the sale and handling of their livestock. The total volume of business at the central markets shows a constant decrease, and this naturally increases the competition for that business open to several markets. My firm struggles to mainfain [fol. 1518] its volume and uses every legitimate efforts to do so. Volume is our only salvation. The diminishing volume affects our gross returns materially. The activities of my firm and those of other firms in handling pasture leases, in appraising livestock before it reaches the market, in helping shippers in connection with financial affairs, have been of greater assistance than formerly. We have put in more time in working off the market for shippers than we did formerly. As illustrated, I spent last Sunday in closing 75 feeding contracts which I made for a Texas customer who had a big string of cattle on Kansas grass. Sunday morning at 5 o'clock I left in my car, closed the deal, delivered part of the cattle, got them on full feed, on contracts which I feel will net the customer $20 a head more than the cattle would have brought on the market. I got no compensation for that, no allowance for my expenses, or for my time, or for the use of my car. This constituted a part of the general services we are rendering. Our customers are our partners. I recall that a customer told us that he made $5,000 on a string of yearlings and that the profit was due entirely to his pasture contract. He volunteered the information that his profit was due entirely to our activities. He lived in Texas, never saw the pastures, and did

not know where they were. We found these propositions and submitted them and looked at them. He shipped the cattle according to our directions, we went out to the pastures and inspected them, and he shipped them to market according to our directions. We got no compensation for [fol. 1519] this service. I think this is a part of our duty. I do not think that we have any right to rear back, go out and sell a man's cattle as quickly as we can, and take our commission. When a man trusts us with his business, we are engaged to give him our best service on the market, as if we were retained at the beginning of the year by a client. We exercise our best judgment and utilize all the experience and knowledge we have to serve the customer properly in the marketing of his cattle regardless of where they go. If we can secure for him, or he can secure for himself which we think will bring him more money than he would get by bringing his cattle to us, we advise him to sell the cattle. We frequently have cases of this kind. It is not a proposition of going out and getting new business, but is a part of the general service we render. I have not time to go out soliciting new business. It is not practicable on account of variations in receipts to regulate personnel so as to meet the peaks of business without keeping your organization intact when receipts are at a point below the peak. Our clientele expects certain men to sell their fat cattle, and grass steers, and fat steers, certain men to sell their stockers, certain men to sell their calves and butcher stuff. We do not know whether they are going to come in the day we have 7 loads or 70 loads, but when they do come it is with the understanding that the man who has been selling their livestock for them will be there on the job. We have to maintain the equipment, the volume of receipts from one [fol. 1520] day to another. It is not like the volume of business of the packing house where they have a mob assembled outside the gate, crowd and pack, in order to get a day's work. Our men are skilled men, trained in their work, and familiar with the operations and needs and desires of our customers. The auxiliary selling service or off the market service is rendered on days and at times of the year when receipts are less numerous than in the October peak. We attempt to utilize the time of our personnel to the fullest extent. 95% of our trips to the country are made at the end of the week when we know there will be comparatively

no business. Friday and Saturday are almost blanks, and Sunday in the last few years, we have had to work particularly in the country. Should all the market agencies, by common agreement, cease all country service and confine themselves solely to the operations on the market, that is to the selling and buying of livestock, there would be unquestionably a sharp shrinkage in the volume of business for the market as a whole. As an individual firm we would participate in the decline. Should our firm alone discontinue its country service, and should other firms continue their's, our firm would sustain a serious loss in business. It would not be advisable for our firm to pursue such a policy. I think the livestock commission business is the most highly competitive business that I have ever seen. It is strictly a matter of selling personal service. Unless you maintain the personal contact as close as you can you [fol. 1521] weaken the prospects of getting business and of exercising the personal service. Furthermore, we would deprive our customers of the service. It is of great advantage for a salesman to have seen livestock and to be acquainted with the manner in which it is fed and handled before it is marketed. All livestock is purchased on the basis of what it will kill or at least what the purchaser thinks it will kill, and many at time on the basis of what buyers say. If the salesman is in a position to state the character of the ration and the length of time the cattle have been fed, what they weighed when they went on feed, it is helpful to him in making the sale and getting the better price. It is well for the operator of a commission business to know something about his shipper's financial condition, the title to his livestock, perhaps through contacts derived from close acquaintance and observations made in the country. Inasmuch as we are responsible for seeing that the proceeds reaching the proper party, it is essential for our own protection that we know as much as possible about the financial condition of the man who ships the cattle, and as much as possible about the shipment itself. If we attempted to do business in the expeditious way as we do now, do it without the knowledge referred to above, we would run into a tremendous amount of losses. Business would be slowed up. If we received a bunch of cattle from strangers we would not remit the proceeds as they directed; we would go to work to find out from the bank to whom the

[fol. 1522] proceeds would be remitted. Intimate knowledge of the shipper's financial condition make it possible to affect a daily clearance. Prompt clearances facilitate the operation of the market. If we did not familiarize ourselves with conditions in the country operating costs on the market would increase and business would decrease. We are confronted with diversion of business from all markets. Our firm spent possibly one thousand dollars developing a fine line of business in and around Fort Worth. We have enjoyed that business for years and spend part of the winter and spring there. The trips are long and expensive. Just as we got ready, one of the big interior packers gets down there and buys it all away from us. Now that was a gamble that we had to take, a legitimate gamble we had in trying to get business. We had it all ripened to come when they got it away from us. Direct buying has increased since 1929, especially the direct buying of hogs. It is almost impossible to meet direct buying competition as carried on in some places. During the last two years from 1929 to 1932 we have come into competition with agencies financed through the Federal Farm Board. We have been precluded from this business, because the avenues of financial credit denied to the old line companies are extended to a few of the preferential companies, cooperatives, so called. This has caused livestock that would have normally flowed through our hands and been sold by us to go to our competitors, the cooperatives, affiliated with the Farm Board. The Texas Marketing Association last winter operated with Government funds. Several million dollars were loaned [fol. 1523] on cattle in Texas to come to Kansas City this summer on condition that the cattle must be shipped to the local representative of the Texas Marketing Association. Dick Arnett, an employee of the Texas Marketing Association, or of the Producers, has been active in working for those agencies. He is active and able, and has been in charge of all of these outside activities connected with the placing of these cattle that were being handled through these Government furnished funds. None of his salary is paid by the Producers Commission Association. If we had the credit to extend he would not have had one third of the business. He has been the chief contributor to the Producers Commission business at Kansas City this year regardless of whether they pay him or not. He is fre-

quently here on the market, but you can find him during the summer and fall seasons at Emporia, which is in the heart of the pasture country. Government Exhibit 114-59 shows an expense item on account of newspaper advertising of $2,028.11. That item can be properly classified as advertising, but there is another view. With 50 or 60 firms all located at the same place, all charging the same rate, and all inviting business, if one does not keep himself constantly before the customers, he will lose part of them. If you drop out your market letter one week, to say nothing of two, you get a lot of letters which say: "Have you gone out of business? Why didn't we hear from you." I don't think you can say that advertising in newspapers is soliciting new business. It is soliciting people who might be dis- [fol. 1524] satisfied, but it is reminding your old customers all the time that you are there and that you want them to remember you. I do not agree to the statement that advertising is economical waste. I think that the business of this country has been largely developed by advertising. What might be true of Russia with very little population and limited newspaper circular would not necessarily obtain at all in this country. I consider that the expenditure of that $2,028.25 for newspaper advertising was on account of business maintenance as well as the acquisition of new business. The next item, on account of circular letters, amounts to $1,782.46. The next item is $2,280.00 on account of postage on market letters. The expenditure of these two items is for the acquisition and solicitation of new business primarily. If I had the time I would never send a circular letter. It is the best substitute I can invent for a personal letter that I would like to write. I write all our circular letters and it is because I do not have time to write each man individually that I send any circulars at all. We do not send any circular letters out in proportion to business done as other firms. There are firms with less than one half of our business that send a great many more circulars and have a bigger list. When a man writes and asks to have his name put on the mailing list I check to see if he had sent us any livestock within the past year. If he had I think favorably of putting him on the list. If he is not on the list I hold up his letter [fol. 1525] temporarily, write him, and ask him what he has and when he expects to ship. If I get a favorable answer

I put him on the circular, and if I don't, I don't put him on. I should say that in about 70% of the instances these circulars are more letters and advisory to our established trade, or to people who have indicated that they expect to have us market their livestock. We do not send circulars to all our drive in customers. There are good many people who used to ship but by train who now bring straight carloads by truck. These get circular letters. The next item is $183.83 on account of novelties, and there is another item designated "other" amounting to $258.42. I suppose that this is on account of pencils, books and novelties. We try to hold these down as much as we can. The- constitute what might be classified as advertising. The next item is entitled "travel" and amounts to $9,141.63. Those figures represent the total outside expense activities of our firm. Some of our men rarely go to the country except on appraisal trips. Others while making appraisal trips go to see as much livestock as they can locate in that particular neighborhood. Our expenses on account of conventions and meetings are rendered separately. As to the other expenses than these, I should not know how to break them down. We have no record, but the expenses of appraisals and the number of trips made by request are increasing. The number of trips made by men who are merely sent to the country to see if they can get some new business is decreasing. One goes to conventions and meetings be- [fol. 1526] cause he hopes to see a greater number of people at a lessened expense. He goes there to talk up his own market as against other possible markets. Frequently when you go to conventions you run out to neighboring towns or stop on your way back to see cattle and see people whom you have met at the convention. It is very hard for me to break up this expense for the reason that when I send a man to the country on an appraisal trip I tell him to expose himself to the business as much as he can. Whatever my expense account has been it has been largely appraisal. Sometimes it was appraisal of something that was inherited, something that man had commercial title to but upon which we had a lien. Usually there has been something with reference to cattle which he had and wanted to know what to do with. My own personal account would be almost entirely appraisal. That would be true of some of our other men, of some others it would not be true. The way it is broken up in the audit it is about 50-50, soliciting one

half and appraisal and convention about one half. I think that would have held fairly good up to the last year or two, but I believe now that the expense which we cannot get away from is more on the appraisal end and less on the soliciting end. I think that I estimated the soliciting end at 60% and that would be conservative now. If the basis were the percentage of times we went by request as compared with the percentage of times we went without request the percentage of requested visits would be larger than those unre-
[fol. 1527] quested. In my estimate I have made allowance for the fact that when we go out on appraisal trips we do some soliciting also. I think now out of ten trips nine are by request. Just before I came up here I had a call from Fort Worth, Texas. A man had some cattle in feed at Emporia which are billed to us. We will get them, but he asked me to go down to Emporia and he does not expect to pay our expenses to look at his cattle and tell him whether — ship them to Kansas City or Chicago. If they go to Chicago we don't get them. That is an appraisal trip devoid of all possibilities. We will not get new business on that trip, and we would not come in contact with any business. We would go from here to Emporia, as quickly as we could, turn around and come back. But this man has been a good friend of ours and we could not refuse him. We hardly ever go to the country without request, but we hardly ever go to the country, if we can help it, without doing some soliciting when we get there, if there is anything in the neighborhood. When we get into districts where stuff is tied up we sometimes find that the cattle are mortgaged to the Producers Commission Association. We found this situation this summer. Under such circumstances we do no soliciting in that neighborhood because it would do no good. We are not spending our money where we do not think it is going to do some good. When it is a fifty fifty proposition we do not want it because things are never as good as they look along these lines. It always costs more to get business than to estimate. Allow-
[fol. 1528] ance has to be made. I think 40% of the total item of $7,141.63 would be a liberal estimate of the expenses incurred in soliciting new business. We have an automobile and we use it in the business. We tear it up frequently and it is a constant source of expense and annoyance. I have

not been able to solve the automobile question satisfactorily. I would not know any better way of prorating the rest of the travel expense. I do not use that automobile when I make appraisal trips. I use my own car. The expense incident to its operation and the depreciation on it are not charged to the firm of Swift and Henry. I pay all the bills myself. All the other members of the firm charge their automobiles expense on the books of the firms. The next item is $1,608.92, and classified as business getting expense under the head "Exchange Soliciting." In the former testimony it appears that that item is the balance exclusive of life insurance premium payments. The item consists of membership dues paid to the Exchange, assessments, all the transportation fund of the Exchange, the agricultural development fund, and reimbursement of the Exchange for the amount it advanced in the defense of Respondents in the rate case. It is classified by the Government accountant in our firm as a business getting expense. I have never thought of the Exchange as doing any soliciting. I think of it as policing the market, looking out for the railroad rate situation in our territory, and looking after the dock- [fol. 1529] age proposition. The only soliciting done by the Exchange in my judgment is in connection with its radio program directed into territory where stocker and feeder buyers are located. The Exchange has a rule which limits the amount of time off the market members of the Exchange may spend. It keeps a record of those who go to the country. I have never known of the Exchange to do any soliciting for our firm. I would not classify the $1,608.92, as a new business getting expense. An item of $13,556.86 is listed as a business getting expense and consists of an amount of the time value for owners and employees allocated to country trips. This amount does not represent the difference between our expenses assuming that these people were in the country and what our expenses would have been assuming that they remained at home. Had they been at home all the time they would have spent Monday, Tuesday, and Wednesday in taking care of business we knew was coming, and the rest of the time warming their chairs in the office. The only difference in expenses to our firm due to going to the country was the actual traveling expenses shown in the audit. The item $13,556.86 does not in my judgment constitute a business getting ex-

pense. The total of the business getting and maintaining expenses heretofore discussed and shown in the audit for the year 1931 is stated to be $31,595.00. I consider this an overestimate. This item amounts to 26% of our gross income. We could not reduce these expenditures to an amount equal to ten per cent of our gross income and main- [fol. 1530] tain the present service we are rendering. Eliminating from the $31,595.00 $23,857.85 there remains $7,737.15, which is 6.2% of our gross income. In my judgment this percentage is much more nearly representative than is 26% of that portion of our gross income directed toward the getting of new business. The portion of our business getting expense classif-able as advertising would constitute an even less percentage of our gross income. I think that the amount classified as "advertising" is spent in maintaining contact and keeping old customers lined up, not in securing new business. In the first hearing in this case I stated that a large proportion of the off market expense related to the cattle end of the commission business and particularly to straight carload consignments, or to customers having a comparatively large volume to market. That is still the case but a few firms are now being called upon to render off market service and incur off market expense in connection with sheep. Sheep are billed to Kansas City to be fed at some intermediate nearby feeding station. If the shipper comes with them he comes into the market and asks you to go out and look their sheep over and sort them. If he does not come with them he advises you of their number and requests you to look after them. Comparatively few sheep now go into the Kansas City market which do not receive off market service.

If we had had no drive in business we would have had [fol. 1531] the same men employed, we did not add a dollar of selling expense because of drive in business. We did not put another man on the payroll. We reduced the pay of men that were selling the straight carloads that continued to sell the drive ins. In handling the drive ins and the yarding of them I took one of the boys that we had been using to yard cattle from the chutes and let him yard the cattle from the drive in gate. Under these conditions how we can sustain a loss of our drive in cattle is beyond my understanding. I am not an expert accountant but if we handle a thousand loads of drive in cattle last year with-

out adding a man to our payroll, and still handled our straight car business. I don't believe we lost any money on the drive in business. What we got out of ours drive in business was just that much tossed in our lap. We did not spend any money generally speaking to get drive in business. We handled it with the force we had before and would have continued to have even if we had not received drive in business. It may be true that we lost money on our drive in business, but I wonder who furnished it. I did not put it into the business. There is something wrong with the figures which show the loss on drive ins. Our expenses shown in Government Exhibit 114-59 are as low as we feel we could make them under the circumstances of our operation. I have never in all the 30 years of business given the expense account so much consideration. I have never worked for as low a compensation for myself and my associates and have never asked my men to work such [fol. 1532] long hours or got so much service out of them. If there is a dollar of expense which has been wasted it has been wasted unknowingly. We have tried to meet conditions to the best of our ability. I think the fundamental error in the Government's conception of the case is in considering all men equal. Until there is a different viewpoint I do not think there is any use to discuss the matter in a general way, I think we should be regarded as professional men, as men holding key positions, men who have spent years in training, men who have special knowledge with respect to markets, clientele, and changing business conditions. We have access to information regarding these changes. To say that a man can sell so many cars of cattle and be worth so much per year, when we all know he cannot get that arbitrary number, or to say that I am worth so much and that somebody else who is possibly in the same position, but not handling anything like the volume of business, or putting in as much time and energy, is worth as much as I am is absurd.

Cross-examination:

As I have understood it the Government has said at some of these other hearings that a cattle salesman is worth so much a year if he can handle so many cars of stuff. The facts are that there are men selling on the market who would sell my cattle for nothing, but I would not employ

them, and on the other hand there are men that would charge twice the prevailing rates that I would be glad to have. I think you are trying to reduce the human equation [fol. 1533] to a set form, and I do not believe it is possible when you are employing skill in the exercise of judgment and integrity and experience. I think that the application of the performance record to a certain salary results in putting a limitation on the amount that a man may earn. I would not say that a definite limitation had been placed on what a man can earn but there has been an expression as to what the Government thinks men doing certain work are worth, and the results are the same thing. Under uniform rates uniform earnings do not result. There is such a low level of commission earnings that it is impossible, under present conditions, let alone any contemplated further reduction, for men of ability to earn enough to take care of his current livelihood needs and provide anything for his old age. You never heard of a commission man, particularly in the last few years, who has accumulated a dollar. At least I have not. I think this situation is peculiar to the rates under which we are operating. Monday morning we had 9 loads of cattle, a four load bunch from one customer and a five load bunch from another. In order to protect ourselves as much as we could we made them up in two shipments because they came from two towns and our net commissions for 9 loads were $123. Under the rates in effect at the time of the previous hearing our commissions would have been $171. The difference is $48. I do not think $123 is proper compensation for the skillful handling of nine loads of cattle which is because they come [fol. 1534] from one owner. I noticed another load of cattle. We had this week coming by truck. We got a little better return on these. We sold $1,685 worth of value and got a little less than $13 commission, three-fourths of one per cent of the basis of present market values. This is not fair compensation. The condition has been growing worse since the Government has entered into the fixing of the commissions. I attribute it largely to that, but it is also due to the factors entering into it now, the lessening unit character of shipments, and the increasing demands being made on us by our customers. There has been some change in the volume of our business. We have had to participate in the lessening volume generally. We have

been able to maintain our relative proportion better than some other firms. We have asked our man to accept less compensation, but in spite of that our earnings still go down. We are being slowly but surely ground to death; there is no question about it and that is the general condition in the central markets in the Middle West and Chicago. Chicago enjoys a much better rate than we do. St. Louis enjoys better rates and has for sometime. Still the conditions are getting worse and worse at all these points. We have not had to add a single man to our force on account of truck in business. As a matter of fact we are handling our business, including the truck in end of it, with one man less than we had at time of my former testimony.

He worked in the butcher alley as a yard man. When an [fol. 1535] organization is set up within certain limitations it has the capacity for handling a certain volume of business. Any increase in business, either truck or rail can be handled up to a certain point without expansion of force. This is particularly true if the business should come in evenly distributed. A great factor in trying to handle a livestock commission business is the uneven nature of receipts. On account of difference of this kind an organization has to be maintained at all times sufficient to take care of a maximum run at any time. It is difficult to say what the peak carload maximum capacity of our firm is, but I would say without any hesitancy, that with a normal flow of business, Swift and Henry with their present organization, with practically no added expense, except such as would be incident to the account sales and few telegrams and things growing out of the increased business, could handle one third more business, but as to any particular day, for one day we could handle more than that, particularly if we had a big run today and a slow market we would be jammed up. There are a good many things entering into it, but if the business could be distributed and flow evenly 30 or 40 loads a day, we could handle it every day in the week, including Saturdays, we could make a tremendous increase in our business. But we have tried for years to reach that condition, but we cannot develop it. That rests with the men in the country that ship. They ship as they see fit and not as we suggest, and, another thing: in [fol. 1536] connection with the peak load at Kansas City, is the fact that we have such a large percentage of cattle

that do not sell as killers. They are bought by traders and a trader is nothing more than a merchant in cattle, and he wants to stock up Monday morning and have the rest of the week to sell his merchandise in, because he does not want to have any cattle left, and, if you bring your stock cattle in later in the week, he is afraid that he won't sell them, so he lays off, and, as a natural result, stock cattle at all markets in the country come most generously on Monday. I have never seen so many people buying their own cattle as in the last two or three years. This condition is growing. There has been a decrease in the number of cars to a consignment and the number of head to an ownership. This condition has developed largely since the advent of good roads. Five years ago I don't suppose we had 20,000 trucks in Kansas City in a year with livestock. This year we will have 150,000 trucks. We use to have what we used to call strings of cattle. There are very few now. They are rare. Nine loads of cattle from one owner on one day is quite exceptional. It was mentioned in the paper as one of the features of the market. A few years ago one man would not have excited any comment by having 20 loads. These nine loads were feeders, weighing 778 pounds, and brought $5.90; *they came* direct from Texas and were sold to a trader. He had been very fortunate in selling some of these cattle before to an Ohio man and I think he possibly had [fol. 1537] an order for them again. All the nine loads were sold to one buyer. They belonged to two different owners. We kept the shipments separate and weighed the cattle in several drafts. We sorted out ten cattle that he would not buy. We took those ten cattle over to our butcher alley and sold them to the packers for killers. The ten cattle weighed about the same as the others, perhaps they were a little lighter. It took three of us to sell the cattle outside of the ten. I helped to sell them myself. I know most of our people. I know their cattle and they frequently call me up or write, "Attention for Mr. Swift: I am sending you such and such cattle. I wish you would give them your personal attention." If, when the cattle come in, they prove to be fat, I go out and look them over with Mr. Henry. I get Mr. Henry's idea. If I think they are worth more I don't hesitate to say so, and I go around through all our straight bunches. I don't pay much attention to drive ins unless there are a few fancy head from some personal

friend. The man who was selling these cattle comes up to the office when he gets up to $5.90 and told me where he was and said: "Shall I sell them or not?" And I said, "Under the circumstances, I believe I would sell the cattle." I really decided, but he worked up the trade. I had an assistant who sorted off the ten cattle and got the shipments in shape to show them and had found the buyer. So it really took three of us to close the deal. The nine loads were not all the cattle we had that day. Mr. Henry had some fat cattle, and we had two loads of cattle from Garden [fol. 1538] City. I did not attempt to say positively. As far as I remember they were all sold the same day. I have general management of our firm and I attempt to exercise that function. We have made some retrenchment in our business during the years 1931 and 1932. The payroll was reduced at the first of 1932. Regular employees were reduced ten per cent, Mr. Henry and myself fifty per cent. There was one month in which I asked all the boys to work for one half of a month's salary in addition to the ten per cent. The per cent did not apply to that month. I am not sure that the ten per cent reduction reached back to 1931. though I cannot be sure. Besides these reductions I have made some individual reductions in two or three cases. We are operating under a substantially less salary list than we used to, but we don't seem to be able to get our incidental expenses much under previous years. By incidental expenses I refer to other than salary account. We feel that we are really being imposed upon by our customers. This has been a matter of grave concern to me. I think it is more largely due to the competition from other markets than any other single factor. I think, however, we have had people in the business who were overzealous in suggesting to patrons whose business they were not getting that if they would like to have them come out and see their cattle, they would do it. It has got to the place now where a man with any reasonable size shipment will hardly send them to the firm unless you go out and appraise them for him and then [fol. 1539] does not always send them to you. It is something that I should like to see discontinued, but I don't know how it can be accomplished."

Pasture contracts entail considerable expense to our firm. This is because water is a vital factor. You have also to go each year to the pasture. If you do not go you

do not know whether the water has failed. The springs may have filled up, the windmill may be out of order, or the tanks may have rotted away. You have to make personal inspection of these pastures before you dare close a contract.

The man who owns the cattle usually remains in Texas and leaves the matter entirely to you.

It would be practicable to have an arrangement whereby the owner would reimburse the expenses incurred on account of the pasture contract if you could change the nature of the Texan and change the attitude of your competitor. This you can not do. The Texan would say that our firm was getting to be a piker. Should our firm try to write this provision into the contract some other commission men on the Kansas City market would handle the contract without that provision, and if he did not some other commission man at some other market would do so. We expect each year to place about 20,000 cattle in Kansas pastures.

Our firm has never kept any account to determine what it costs to place pasture contracts. In my own mind I am satisfied that the placing of these pasture contracts is a [fol. 1540] paying proposition, and I notice that the firms which enjoy the larger portion of the pasture cattle are the ones who are most active in negotiating the pasture deals. We used to write into the contract a provision requiring that the cattle should be moved in shipments of not less than five cars, because the cattle are frequently from eight to fifteen miles back from the railroad. It is quite an item to bring them in. The pasture men would not consent. Competition has changed the situation so that we write in the contract now not less than two cars. The unit is getting smaller even in pasture consignments.

Our appraisal service is not confined to large consignments. We have certain men who establish contacts with the larger business. We have others who establish contacts with the native business, particularly the feed lot business.

The appraisal service is rendered chiefly in connection with sheep and cattle.

The activities of the agencies which ultimately get their money from the Government have become more elaborate and extensive. These agencies are now advertising that

they will loan money to feeders at six per cent. The banks here are charging considerably more than that for what little money they are willing to loan.

Some of this appraisal is in connection with our loan work but not nearly such a large proportion of it as formerly. We have reduced our loans materially. I do not [fol. 1541] think that ten per cent of our appraisal work during the course of a year would be on livestock on which we have loans.

Our firm does not establish a budget according to which it predetermines the amount which it will expend for getting and holding business or for other items of expense. We cannot tell what the developments will be. We know in a general way what our expenses per month are. Our incidental expenses run about so much and we know what our salary account is going to be. I can figure pretty closely at the beginning of the year what the expense is going to be. I then just make a bet that I will get that much or more business. I do not know what the competition at Denver or Fort Worth or Wichita or St. Joseph will be, or how much pressure those markets will exert for or against us. We cannot anticipate the situation. There are firms down there that say they will not travel at all. It is reflected in their volume. They are the ones that do the least. The flow of business and the character of business vary, and there are fluctuations in the market. I testified last year that the character of the service rendered is a big factor, but I tell my boys that handling people is just as important as handling their cattle. Courtesy and courteous treatment, embraced in the character of service, are big factors. The important thing is taking the attitude that your customer is your partner and that you should do anything you could from answering the first letter you get from him to going out in the middle of the night [fol. 1542] and pulling his livestock out of a wreck somewhere. The initial shipment to a firm usually costs more than the firm gets out of it. New business doesn't cost more than it is worth if it is handled in a way such as to bring back a return engagement. We are frequently called out on a trip to see a man and spend quite a little money. He may ship us one load of stuff; that one load didn't pay for the trip. It would cost us money, if we didn't hope for a follow-up. The firm that can't hold its busi-

ness doesn't make any money. I never thought of payments to the Exchange as expenditures for solicitation. Fewer of our customers come to market than when shipments were larger. This statement relates to our carload business. When they do come, however, they expect attention from our personnel, but nothing like in the old days when money was spent on entertainment uptown. They do expect to visit with us in our offices.

Redirect examination:

The flow of business to one market or to another is determined largely by whether or not the markets are in line. Freight rates also have an effect upon the flow of business to a market. I have heard no complaints on the part of our customers as to the commissions we are charging. The tacking of small items on to the flat charge, such as the deductions made for the National Livestock and Meat Board is quite irritating and has a tendency to develop friction and to produce inharmonious relations. Commissions charged on cattle weighing over 800 pounds [fol. 1543] amounted to 96/100 of one per cent of the gross proceeds. I do not believe that the moving of rates up and down by as much as 15% of the commissions charged would have affected the flow of livestock to my firm. Such a change, however, would affect our revenue materially. A two dollar savings to a customer who ships two cars a year on the average is four dollars, but a two dollar savings or less on from five to seven thousand cars that we can handle in a year is a vital factor to us and if carried any further is bound to affect our efficiency. We charged off in the year 1931 $29,237 on account of losses incident to the loan business. We had indorsed all the cattle paper which we rediscounted. A witness for the local agency of the Producers Commission Association testified that their local agency had indorsed paper to their credit association up to the middle of the year 1931, but that under an arrangement with their association they had been relieved from the effect of a liability incident to these indorsements. Those to whom we sold our paper bought it on our endorsement. We have made good our endorsement of that paper up to date and that is where the loss of $29,237 is.

(Whereupon the witness was excused.)

Respondents' Exhibit No. 255

(Whereupon Respondents offered and asked to have received in evidence Respondents' Exhibit No. 255, the same being a comparison of the elements of cost and reconciliation of difference between Respondents' cost study and the Bachmann cost study relating to 59 firms.)

[fol. 1544] MR. C. A. STUART, a witness called by the respondents, after being sworn testified as follows:

Direct examination:

I am the C. A. Stuart who in 1931 was a member of the firm of Stuart, Gillespie and Company. Mr. Gillespie died during that year. I am now a member of the firm of Stuart-Robinson-Hoover. I will have been in the commission business at Kansas City twenty-six years the first of January. I started in the livestock commission business in Wichita, Kansas, and still maintain my office there. I began business there 29 years ago. I have been handling livestock ever since I was a boy. The net return to the owner of a livestock commission business or a market agency has become worse at the Kansas City stockyards in the last year or two. The work is harder. Demands on the part of customers for market service and requests have increased since 1929. General conditions have been one cause, probably the principal one. Competition from other markets has entered into it. Cooperative organizations with their stockholders throughout the country who solicit business for them has been a cause. Statements made in speeches by the Secretary of Agriculture to the effect that the cooperative movement was receiving the assistance of some three thousand county agents throughout the United States has been a factor affecting our business to some extent. During the year 1931 I managed the business and directed the management of the office as well as the selling of cattle in the yards. [fol. 1545] I put in a good deal of time the latter part of the week in the country. I feel that this is a great benefit and that my customers consider it a benefit. I have requests from a great many of them to look at their livestock and to see how they are handling them and to advise them. I know that it is of benefit to them and I am sure that they feel that

it is. Due to the hard times which prevail, customers seek counsel and advise more generally than they do in normal times. I think instances occur every week in which advice to customers proves beneficial to them. It probably occurs every day. Purchasers of slaughter cattle want to know how they have been fed. It is an advantage to a salesman to be able to tell the purchasers accurately and to base his statement upon his own observation and information. It is not so much of advantage to the salesman as it is to the owner of the livestock. He is the man who benefits. Last week I had two cars of cattle from a customer of fifteen to eighteen years standing. I did not seem to be able to get what I thought his cattle was worth. I finally got Armour's head man to look at the cattle. I told him that I knew how these cattle had been handled and how they had been fed, that I had seen them when they were put on feed in August and that I had seen them in the feedlot two or three weeks ago. I finally got 25¢ a hundred more for cattle than any other buyer had bid on the cattle, and a fairly satisfactory price. This week Monday I had a load of the same cattle [fol. 1546] with a little stronger market, I sold the same buyer at a price 25¢ a hundred higher than the price paid for those sold the previous week. He said that the cattle killed satisfactorily. He bought the second shipment of like cattle at a price 25¢ higher than anybody else bid for them. The benefit accrues to the owner of the cattle and not to the commission firm who gets the same commission regardless of the price obtained. The benefit to the commission firm arises from the fact that by helping the customer it retains his confidence in a greater degree. Most of my business maintaining effort takes the form of trying to benefit my existing customers and trying to merit and hold their confidence. I put in a very small portion of my time and incur a small proportion of my expense in getting new business. My business is very largely confined to the handling of cattle. It grew out of personal confidence and the belief of my customers in my ability to serve them well. Government Exhibit 114-25 which is an audit of my business shows an item of $1,898.73 standing opposite the sub-classification "advertising" under the heading "recapitulation of Business Getting and Maintaining Expense." This sum is the total of several items appearing in the audit, one of which is circu-

lar letters, another postage, another specialities, novelties, and then miscellaneous items. We send out market letters. We have a mailing list. Eighty-five or ninety per cent of our entire mailing list consists of people for whom we are selling cattle or for whom we have sold cattle within the last [fol. 1547] two or three years. We revise the list from time to time. We seldom retain any one on the list from whom we have not received business within two years. We do not send these market reports to all of our drive in customers. The remaining 15% of our mailing list is made up of friends of our customers. Our circulars are sent out quoting the market. Quite often we add our opinion of the future market. We do not send them as advertising or soliciting letters. Very little of the $1,898.73 was spent for newspaper advertising. It is my judgment that 85% of the items $504.74 and $795.89 spent on market letters and mailing should be treated largely as service to our customers and not as cost of soliciting new business. Some of the $500.60 spent for specialities and novelties went to our established trade and some to prospective customers. These specialties consisted largely of memorandum books, pencils, and the like. The other $99.50 of the expense could probably be classified as expenditure on account of maintaining business through advertising. The amounts set opposite the sub classifications under business getting and maintaining were given to the auditor at the time the audit was made and represent my best judgment as to the amounts. We attend the meetings of the Kansas Livestock Association out in Wichita each year and we come in contact with various livestock men, for some of whom we sell livestock. If I have ever picked up a new customer at these conventions I do not know it. There is very little soliciting done at cattle- [fol. 1548] men's meetings. It is kind of a get together meeting. The Exchange does not require us to register to go out. They do not consider it as soliciting. Frequently we do pasture lease work at these conventions and frequently get our customers and the pasture men together. We frequently go to these meetings to represent the market, realizing that there will be men from other markets there. We do some of our travel by automobile but don't charge automobile expense up on our books. We charged gasoline and oil used on trips during 1931 but made no charge to the company for the use of our cars. Most

of the trips we made were by automobile. I do not think that Exchange assessments and dues on account of the transportation fund, the agricultural development fund, and the assessment to reimburse the Exchange for its expense in connection with this hearing have anything to do with the soliciting of new business. I am now one of the directors of the Exchange and have been a member of it for many years. It has never been the policy of the Exchange to solicit business for any particular firm with which members of the Exchange were connected. The activities of the Exchange have been devoted to safeguarding of the shippers' interests, sanitary activities, the agricultural development fund, protection of freight rate situation, the radio and radio service. As a director of the Exchange my official attitude toward any officer of the Exchange who engaged in solicitation for a particular firm would be one of opposition. It has been the policy of the Exchange to hold down expenses incident to broadcast- [fol. 1549] ing and soliciting of new business. A good many rules of the Exchange have to do with those matters. I have served as a member of the board of directors of the Exchange for 13 years out of the 26 that I have been a member of the Exchange. During that time the Exchange has done everything that it could reasonably be expected to do to minimize and reduce, where possible, the activities of the various member firms in connection with the expenditures for solicitation of new business. In 1929 a rule was adopted whereby members of the Exchange were to discontinue the giving of free subscriptions to the Daily Drovers Telegram to their customers. That action caused considerable opposition on the part of the stockyards company and other interests and on the part of some members of the Exchange. They felt that it was unwise. We employ no regular solicitors. Our soliciting is done by those of our salesmen we can spare. Solicitation is done at the latter part of the week when receipts are very light. Our men go out to the country and appraise cattle. The only expense that we could save if we did not send out these solicitors would be the little additional cost in the necessary expenses of living and the cost of gasoline and oil. We would make no savings in our salary account. It would be very largely a matter of stand by time in the office. During the periods that our solicitors are in the country I feel

that we are serving our customers better than we would serve them if we remained on the market. I, myself, would much prefer to stay at home during the latter part of [fol. 1550] the week than to go out to the country. On the basis of the analysis of expenditures as shown in the audit, I consider that 2.8 per cent of my gross revenues from commissions would represent my out of pocket soliciting expense incurred in the year 1931.

Rail cattle are received very largely on the first three days of the week. They pile up in higher peaks on those days in the fall season than at other seasons of the year. It is necessary for me as an operator and manager of a commission business to be ready to handle the cattle and to have a personnel that is equipped, skilled, and experienced, in order to handle the cattle properly. That is a difficulty which confronts me in operation. The conditions confronting me would be quite different and the costs would be quite different if these receipts were spread out over the five or six days of the week in comparatively even amounts as regards days and seasons. This is a matter over which I have no control. Cattle move at certain seasons of the year. The climatic conditions and the shippers control the situation entirely.

Cross-examination:

Prices vary from month to month and the spread varies from month to month. The spread in prices during July and August this year was equal to what they were back in 1929, because in August we had a very high top for our cattle and a very low lot of cattle selling at very low prices. The prices have come closer together at this time. [fol. 1551] I could not say that the difficulties of salesmanship are less when the spread is less. I do not recall any time in my experience when it was unnecessary for a commission man to do some appraisal work. I recall no time when commission men did not perform this service, but I can recall times when they did not do 10% of what they do now. I think this change has come about because of the realization on the part of customers of the benefit which commission men can do them in appraising their livestock. Appraisal work has grown gradually from a very little to the great deal that is being done now.

If I give the buyer my personal knowledge as to how

cattle have been fed before they come to market it carries more weight than what the customer has told me about how they have been fed. If I should visit a feedlot and find out that cattle have been poorly fed, my attitude would be to say as little about it as possible and let the buyer be his own judge. We give them the best information we have, especially if it will be a help in getting a good price. If a packer buyer should ask how the cattle have been fed, we try to keep away from saying or doing anything that would keep them from giving the worth of the cattle. If a man wants to maintain his business he must be fair, it has been my experience, and he must be fair with the people he deals with every day and we do not over describe any feeding of cattle as to which we take other people's words. By advertising I mean newspaper advertising, billboard [fol. 1552] advertising, and possibly handing out a memorandum book or a pencil to some one who was not a customer. I regard advertising of value only in reaching possible new customers. Advertising, as I have heard it defined here, has very little connection with established trade. If I did no advertising at all it is my opinion that from 60% to 75% of my established trade would continue to come to my firm. I regard it as having some value in connection with established trade, but little. Our firm expects to get some new business from the use of the market circular but I would hate to depend on my future trade from what business I would get from the market circular. I do not think that the market circular in the case of my firm could be dispensed with without the loss of business. There would be a reduction in cost of operation if all the market agencies at the Kansas City market should band together in the dissemination of market information and in the elimination of the dissemination of information by the individual firms. The cost would be much lighter if there were only one market report sent out by all the firms, but the effect to the individual firms would be damaged by so doing. Customers expect to hear from the people that sell their livestock and want their information on the market and their views on the market. The establishment of the clientele of our firm is due primarily to the fact that we have rendered satisfactory service, have obtained satisfactory prices, and have handled livestock satisfactory in

other ways. There are many ways of satisfying the cus-
[fol. 1553] tomer other than in obtaining prices merely, humane handling of livestock in the sorting, yarding, feeding and weighing. Our firm places no limit upon the amount of appraisal work which it does. We do as much of that work as time will permit and as in our judgment is beneficial to the trade or to our business. We refuse requests for that service. If we did not we would be out all the time. We do not perform this inspection appraisal service for all of our customers, but we do for more than 50% of them. This does not include the truck in business. It refers only to rail business. We do very little appraisal work for our truck in business. Practically all of our expense for appraisal and soliciting work is on the rail business. In some cases when we decline an invitation to come out and look at cattle we don't get the cattle. Generally, somebody else goes out to see them. I think that shippers ask other firms at this market to come out and look at the same cattle that my firm has looked at, however, this is not true in a big percentage of the cases. It occurs occasionally. If we should curtail our appraisal work materially the affect on our business would be bad. I think that I would lose a portion of the business that I could hold by going out and giving them this service. It is my observation that the market agencies at the Kansas City market are doing more of this appraisal service as the years go by. If some firms are more active along this line it makes it necessary for other firms to become more active, to an extent. Within recent years and within recent months my
[fol. 1554] firm has been reaching out more extensively for business. It has gone into new territory. This is not peculiar to any particular locality. Our firm has been going out more this year than it did last year because we have increased our force by doubling the two firms together, organizing the company, and consolidating the two firms, and in increasing our business necessarily we are having to increase this work in recent months. The market agencies of Kansas City find it necessary to reach out further into the territory of other markets in order to protect their interests and the commission business at Kansas City against the inroads of other markets. In my opinion the action of the market agencies at Kansas City in discontinuing free subscriptions to the market paper has not only been justified but was necessary under the present rate

of commissions. It was too expensive. I do not think that its discontinuance has had an adverse effect upon our business. Our firm sets aside no particular portion of its gross income to be expended for getting new business or for holding old business. We spend just as little money as we can get along with on that portion of the business. We have to do about so much business and there is not any use of us setting an amount aside to take care of that. We have to do what we think is necessary to try and get all the business we can. Sometimes it costs more than the gross income from the business. We have done business at a loss and a number of other firms have done business at a [fol. 1555] loss more than one year. I don't believe there is a commission firm on the stockyards, to my best judgment, that has not at some time done business for a whole year without getting a dollar out of it. There are many reasons for these failures to make money. A commission firm which has a local business or a local territory from which it receives much of its business may have that business destroyed because of the total crop failure. The reduction in receipts incident to the failure may reduce the business to a point where it will not pay expenses. A firm whose business is pretty well scattered is not so much affected in this way. A firm which loses money because of a drought hopes that the territory will be better supplied next year, will have a crop next year, and they do not feel like releasing all of their organization, or letting their organization go to pieces, and for one or two years' time they will do business at a loss trying to maintain their business and to hold their force intact. In my opinion the business of a majority of the firms is from certain territories. A few of the larger firms draw their business from a larger territory. Practically all of the commission men operating on the Kansas City market receive stockers and feeders from the wide range territory. There is always some of this business coming to market. Crop failures or any other disaster like a drought would not ordinar-y affect the whole territory. The bulk of the fat cattle are received the first three days in the week.

[fol. 1556] Redirect examination:

Packer buyers are good judges of cattle and good judges of men. If I am silent about the way in which cattle have

been fed, or give hearsay information, or evade an answer to a direct question, that has an effect on his bid as compared with a situation where I come out voluntarily with a positive statement that the cattle have been properly fed, have been fed corn over a period which would ordinarily give the beef a good quality. I should say that the ability to give the information to the buyer when the facts justify it raises the price sufficiently above what it would otherwise have been to pay the commission charges and the expense too. In 1931 I had according to Exhibit 115-A a per car income on my straight car single ownership rail consignments of cattle of $17.94 per car on the average. To this there was attributed an expense of $11.66. With respect to truck-ins there was an income of $20.15 on a carload equivalent, against which there was charged an expense of $47.83. I know that this is not the cost in my business. I don't know how they could have arrived at anything so far from being fair and just. It is unreasonable. In my business the drive-in business is largely fill-in business. It utilizes time at the market that might not be otherwise utilized.

Recross-examination:

In a great many cases, but not in every case, I can get 25¢ per hundred pounds more or something more for the livestock than if I did not know how it had been fed. In the majority of cases the buyers take the way livestock [fol. 1557] has been fed into consideration and will pay more for the stock if they know that it has been properly fed. I did not say that I could raise the 25¢ every day on top of what the price was the day before. It merely means that I can get what the livestock is worth. Judgments vary some and that makes the difference in the trading margin on cattle. One buyer will bid 25¢ and ofttimes 50¢ less than you sell your cattle for.

G. T. LAIRD, a witness called by the respondents, after being sworn, testified as follows:

I am connected with Laird Brothers Livestock Commission Company, one of the respondents here. I am one of the owners of the business. I have [redacted]t heard all of Mr.

Stuart's testimony, but I have heard quite a lot of it. I heard his testimony concerning the classification of business getting and maintaining expenses. A larger percentage of our cattle business is truck-in business than is the case with Mr. Stuart's business. My brother and I have been active in the development of the truck-in end of our business. I think that the truck-in business is more expensive to handle than the rail business. Our expense for circulars or market letters in the year 1931 was $2,924.43, including postage. We have what might be termed three different lists, a weekly list, a bi-weekly list, and a monthly list. We send market letters to some of our drive-in customers once a month. Our drive-in business has been in-
[fol. 1558] creasing. Seventy-five per cent of our mailing list represents rail customers. About 75% of our travel is incident to appraising and servicing livestock for old customers and about 25% of it devoted to soliciting new business. The Exchange as an organization has done no soliciting for our firm. We make our trips to the country the latter part of the week. We are not as busy selling livestock the latter part of the week as we are the first part. We are busy in the country during the latter part of the week. We employ no regular solicitor. Soliciting is done by the salesmen and owners of the firm. Outside of automobile expense and other travel expenses we would not save anything if we stayed at home the latter part of the week. So far as the time of our men is concerned, we sustain no additional expenses by reason of the country trips. The additional expense is in the travel and automobile expense.

Cross-examination:

Our firm has been active in its efforts to attract drive-in business since the drive-in business began to develop. We go on appraisal trips for truck-in customers the same as we do for rail customers. The trips are made on Thursdays, Fridays, and Saturdays. Our whole force does not go. One or two of us go, but we do not go every week-end. Our trips are not limited to the requests made. If we were to discontinue our appraisal work we would still need the same personnel which we now employ. The purpose of our going to the country is to see a man's stock and to give
[fol. 1559] him an idea as to about what it will sell for on

the market, or what like livestock sold for on previous days or a few days past. We advise our customers as to the value of their livestock before they ship them to market. If we did not do this other commission men would go to see them, appraise them, and get the business. Other firms on the Kansas City market are very active in carrying on appraisal work. They go out into the same territory which we visit and sometimes look at the same livestock which we look at. We get most of our requests for appraisal service through letters. Sixty per cent of our customers ship to us exclusively. We revise our mailing list once a year. We have about four thousand names on the three lists. The newspaper reports on market conditions and price do not go into as much detail as our market letters do. My brother and I manage our firm. We do try to hold down our expenses incident to advertising and solicitation work as much as we can. There has been no retrenchment with respect to these expenses in the last year or two. We have made changes in our advertising policy and tried out new methods and we have discarded old methods in order to determine what the effect would be on our business. We have tried reducing our mailing lists and our business declined. We have tried reducing our time going into the country and our business declined. We find it necessary to keep up these activities in order to hold our business. If other firms acted in concert with us, I think it would be hazardous to our customers. When we [fol. 1560] reduced our mailing list and reduced our time in the country somebody else got the business, we didn't. We get cattle, hogs, and sheep.

J. B. WALLACE, a witness called by the respondents, having previously been sworn, testified as follows:

Cross-examination:

The losses experienced since July 1, 1924, covered by the bond requirements under the Packers and Stockyards Act were $5,222.14 paid on account of the George E. Cole Livestock Commission Company in January, 1925. The next loss occurred in March, 1927. The claim arose in connection with the Ben L. Welch Livestock Commission Com-

pany and was for $4,192.34. That claim has been entirely wiped out and we saw fit to continue a bond for that firm so that they could continue in business.

MRS. LOUISE MCGREW MOFFETT, a witness called by the respondents, after being sworn, testified as follows:

I am the widow of T. S. Moffett, formerly of the Moffett Livestock Commission Company. I am now one of the owners of the business known as the Moffett Livestock Commission Company. The business is a partnership. The partners are Mr. Baker, Mr. Barney Metz, Mr. Bradshaw and myself. In 1931 Mr. Baker and I were equal partners. My husband died on December 22, 1930. I had been very active in helping him in his business affairs. I have been with him in his ranch and stock business 18 years. In February, 1923, I started to go to the livestock office and [fol. 1561] went with him every morning when he went, and came home whenever he did. We worked together in all those things. After 1923 I was constantly with him at the time he was in the office. During the early part of the week he wanted to get to the office at about 5 o'clock in the morning. The latter part of the week, not so early. I always went with him to the country to appraise cattle and to visit customers, if he went in the auto, and I sometimes went with him if he went by train. I always took him in the auto because he did not drive the car. I was acquainted with practically all of the customers of the Moffett Livestock Commission Company. Mr. Moffett had extensive ranching and stock raising interests. He operated ranches for himself and also for Moffett Brothers and for another partnership. Those ranches are located in Comanche, Barber, Pratt, Harper, Anderson, Meade and Logan counties, Kansas, and in Pittsburgh County, Oklahoma. He had some farms also in Clay County, Missouri. Managers were in charge of the majority of these ranches. We operated some of them ourselves. Mr. Moffett had extensive acquaintance with people, particularly the livestock growers in the counties where these ranches were located. I had about the same acquaintance which he had. From 1923 until the date of my husband's death I helped out in the office, especially with writing to the customers.

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I was executrix of his Missouri properties. My sister, Mrs. Grace Torrance Clark, was executrix in Kansas. We had always kept an office for ranch business adjoining the of-
[fol. 1562] fice of the commission company. After Mr. Moffett's death we moved into the commission company's office, occupying the smaller of two rooms. The room which we occupied was not paid for by the commission company, the estate paid the rent. During my husband's lifetime and during the time since his death commissions on the livestock belonging to him or to his estate were paid to the commission firm just as they would have been paid by an outsider. After my husband's death I made application to the Exchange for membership and was granted one. Before Mr. Moffett's death he had contracted with Mr. Baker to engage salesmen and office help for the year 1931. He died suddenly on the 22nd of December. I agreed with Mr. Baker to take a half interest and half responsibility provided I was admitted to the livestock exchange. Had we not done this the people employed by Mr. Moffett would have been thrown out of employment. I purchased Mr. Moffett's membership. The Exchange gave me also the privilege of soliciting. I have another membership which belongs to the T. S. Moffett estate. I personally supplied half of the working capital and own half of the furniture and equipment. After Mr. Moffett's death patrons were advised of his death and that I would continue in business along with Mr. Baker. It would be difficult for me to give the exact time I devoted to the business. My sister's hours and my own hours were longer than most. We worked from a quarter of seven until seven at night many times, all day
[fol. 1563] Saturday, all day Sunday. I wrote hundred-and hundreds of letters to keep Mr. Moffett's trade and always kept in touch with his customers. Whenever they came in I conferred with them. We have done in our office a great deal of the stenographic work of the firm. In the first part of the week when the rush is on I do a great deal of billing, and if necessary some account sales. I help Mr. Henderson out whenever he needs it, especially on Friday and Saturday with the balancing because our bookkeeper does not come down on Friday and Saturday. My sister has helped out greatly with this work at times.

Since Mr. Bradshaw and Mr. Metz have become partners in the business I have continued to help in the office work

and have performed other duties as I did in 1931, and have even done more work. Only two or three times have I charged the gasoline and oil and tire repair expense of trips to the commission business. I have made no charge on account of the car and have charged nothing for depreciation.

Cross-examination:

I did not go to the office with Mr. Moffett or make trips with him to the country because of his health. He was never sick a day in his life until that on which he died. I had no regular position in the office but helped out when needed. This applies both to the ranch and stock business and the commission business. My work consisted in writing letters, keeping books, figuring tickets and doing whatever needed to be done. A great [fol. 1564] many of the letters would be composed by me. My sister helped me with them. My sister did not have a regular position in the office. She was helping Mr. Moffett, as I was. I am executrix in Missouri. I assist my sister, Mrs. Clark, in her administration of the properties in Kansas. Mr. Moffett owned two ranches himself. He was interested in from 21 to 25 farms and ranches. Some of these were relatively small farms and some ran up as high as 20,000 acres. Neither the estate nor the partnership estates are settled yet. Since Mr. Moffett's death I am operating the ranch over in Birmingham, Missouri. That takes a good deal of my time but not as much as it took in 1931. I do a great deal more work in the commission business than I did before Mr. Moffett's death, more soliciting and visiting in the office. Mr. Baker is buyer for our firm. Mr. Metz sells cows and calves and Mr. Bradshaw sells steers. They and I manage the business. I have as much work in connection with the commission business as I did before Mr. Metz and Mr. Bradshaw came into the business. I do soliciting when I go to the country. When I go to the country I take a description of the cattle and let the salesmen in our firm pass upon it. The farm managers and ranch managers help me in going around and looking at cattle to be appraised in their own neighborhood. The partnership estate with respect to which I have been spending a part of my time outside of the commission business has only been the T. S. Moffett estate

and the Moffett Brothers estate. There are about five farms in the Moffett Brothers estate. The largest of them [fol. 1565] contains about three or four thousand acres.

Redirect examination:

I think I have held a great deal of Mr. Moffett's trade. These former customers consult with me about where they should sell their cattle and how they should finish them and whether they should go to Kansas City to be sold or should go to other markets. They visit with me in the office and talk to me personally about it. I spend more than half of my time in connection with the commission business.

Recross-examination:

I never sell or buy livestock in the yards. In 1931 I left the management of the commission business pretty largely to Mr. Baker. The four partners have now designated him as manager. The salesmen give me information as to when livestock should be shipped to market. I rely upon this information and relay it to the owners.

Redirect examination:

The firm owns no automobile. The three members of the firm have their automobiles and use them. They charge none of the depreciation of these automobile- to the firm. Mr. Baker has always had and used his own car. Whenever he made a trip, he would charge up the gas and oil to the firm, and sometimes he did not even charge this.

We got out market letters in 1931. We used our own mimeograph and our own printing machine. I have econo- [fol. 1566] mized all I could. It was necessary to be careful. Our expense on account of postage is unusually low. We try to be awfully careful of all of our expenses. If it is not a very busy time, we skip a week in the market letter. That makes some difference. We do our own mimeographing in the office. We print practically all the circulars we send out.

Recross-examination:

Mr. Metz, Mr. Baker, and Mr. Bradshaw, each own a larger interest in the business than I now own.

Whereupon the witness was excused.

Respondent's Exhibit 256

(Whereupon respondents introduced in evidence Exhibit 256, the same being the Drovers Journal Yearbook covering the year 1931, published by the Chicago Drovers Journal.)

Respondents' Exhibit 257

(Whereupon respondents introduced in evidence Exhibit 257, the same being certain copies of amendments to tariffs on file at other markets, and offered as a supplement to Respondents' Exhibits 19-A to 19-E inclusive.)

Respondents' Exhibit 258

(Whereupon counsel for respondents requested that it be agreed between respondents and the Government that such information as is contained in the annual reports of respondents for 1931, known as form P & S-3, be available [fol. 1567] for the use of either party, and that such information be incorporated in the record at any stage of the proceeding by either party upon notice to the other parties. It was stated that this arrangement was desired in order to avoid encumbering the record with voluminous reports. Counsel for respondents stated that he was aiming to get into the record a statement of the gross proceeds of livestock sold and purchased, as indicated upon these reports for the Kansas City market as a whole. Counsel for the Government stated that he would recommend that such a compilation be made and introduced as an exhibit in the record. The examiner recommended that the proper authorities in Washington furnish the desired data and that it be incorporated in the record just as if formally introduced at the hearing.)

Mr. J. H. Tedrow, a witness called by the respondents, after being sworn, testified as follows:

Redirect examination:

I am the same J. H. Tedrow who testified at the former hearing in this proceeding held in December, 1930. I still

represent the Kansas City Livestock Exchange as attorney in connection with transportation and traffic matters. I am at the head of the traffic department of the Chamber of Commerce at Kansas City, and I am attorney for the Chamber of Commerce in matters involving freight rate proceedings. As such I come into contact with the traffic departments of exchanges, boards of trade, and chambers [fol. 1568] of commerce at other cities, such as Omaha, St. Louis, Chicago, Sioux City and Denver. I have never heard of any large livestock market which was not represented in an organized way for handling traffic and rate matters affecting the livestock industry. In my judgment, a market not so represented would suffer. Different markets, different cities, and different sections of the country strive to protect their freight rate positions against rates which would create undue, unfair or preferential advantage to other competitive cities, sections, and markets. The Interstate Commerce Commission permits and generally receives the presentations made on behalf of individual markets, cities, sections and communities.

At the last hearing I testified concerning the general investigation of freight rates which was then being conducted by the Interstate Commerce Commission in pursuance of what was known as the Hoch Smith Resolution, adopted by the Senate and House, instructing the Interstate Commerce Commission to conduct such an investigation. This investigation is known as Docket 17,000. One part of it known as part 9 deals with livestock. The proceedings in that case were initiated in 1927, hearings were held in 1928, final argument was had at Washington before the Interstate Commerce Commission in October, 1929. I stated at the former hearing that the case was pending. Since that hearing the case has been decided and many and notable changes in the livestock rate structure have been made. [fol. 1569] These changes affect this market. (Respondents' Exhibit 260 was offered.) One of the most important rate provisions we had at this market previous to the Commission's decision, effective January 25, 1932, was the market privilege with change of ownership. Under that provision which was generally carried in the railroad tariffs livestock could come to the Kansas City market at the Kansas City stockyard and be sold, provided however the identity of the shipment was not disturbed, that is, the cattle

changed around, through hogs brought in or through cattle brought in, and go out on the balance of a through rate to destination. This meant a considerable saving in freight charges to the producer. Livestock could be purchased on the Kansas City market by buyers for eastern slaughtering points and instead of going out of Kansas City on the flat rate it would go on the balance of the rate from origin to destination, at a considerable saving. It was our contention in this livestock proceeding before the Interstate Commerce Commission that that privilege was a great advantage, not only to this market but primarily to the producer, because it enabled him to net more for his livestock. We made a plea for the marketing privilege with change of ownership retained. The report of the case which was made early in 1929 proposed to continue that privilege, but the final decision of the Commission, which is found on page 112 of Respondents' Exhibit 260, put the word "out" after the word "with" and made it read "without" change of ownership. That meant that when live-
[fol. 1570] stock was sold on the Kansas City market for delivery to eastern slaughtering points there could not be change of ownership here at the balance of the through rate. Combination rates would have to be paid and this resulted in the strange illustration set forth on map No. 259; this map is Respondents' Exhibit 259.

On the Santa Fe west of Kansas City, about 7 miles from the stock yards, is located a railroad stockyards by the name of Morris, and south of Kansas City on the Missouri Pacific there is a stockyard which is called Prospect Yards. These are about 5 miles from the Kansas City stockyards. The railroads provide transit privileges on livestock at those points which permit change of ownership. The eastern order buyers or anybody that wants to ship livestock away can go out to those outlying yards, buy the livestock, and ship it on at the balance of the through rate, amounting to savings of as high as 25¢ a hundred pounds against what they get out at the Kansas City stockyard. What is true with respect to the Prospect yards and the Morris yards is also true as to those located at Olathe, Kansas, which is about 20 miles south and a little west of Kansas City on the Santa Fe and the Frisco. It is also true at Emporia, Kansas, which is about 150 miles west of Kansas City on the Santa Fe. Since the advent of these new rates

we have found that we are entirely out of line with these small outlying railroad stockyards and the stockyards at Kansas City is unable to compete with them on anything like a rate parity on traffic which is going through to its ultimate destination in the east. (Respondents' Exhibit [fol. 1571] 261 was offered in evidence.) Exhibit A of this exhibit consists of five pages. On page 2 is found Vinita, Oklahoma. Kansas City is the largest stocker and feeder market in the world. The rates apply to cattle. The same rates also apply to sheep, double deck. Prior to January 25, 1932, the rate on stocker and feeder cattle from Vinita, Oklahoma, to Bloomington, Illinois, was 52¢ a combination of the rate of 25¢ to Kansas City and 27¢ beyond. On January 25 these rates were changed. The through rates become applicable on stocker and feeder cattle and were 43¢ to Kansas City. The rate via the Kansas City market became 56¢, or 26¢ to Kansas City and 30¢ beyond. This made us 13¢ out of line as against the through movement. Prospect or Morris or Olathe, Kansas, or any one of a large number of points out in the country where there are railroad stockyards which handle these cattle on a through fat cattle rate enjoyed a rate of 50¢, approximately 6¢ a hundred less than the same service accorded via the Kansas City public stockyards. Albuquerque, New Mexico, is the seventh point on sheet 2 of the exhibit. Formerly the rate on stocker and feeder cattle from Albuquerque to Bloomington was 84½¢. A through rate of 61¢ became effective on January 25. The rate via Kansas City is 87¢, or 26¢ more than the through rate, while the rate if this stock should be brought into Prospect or Morris or Olathe would be 72¢, or 15¢ less than the same service via Kansas City. This last figure is not shown on the exhibit, but I have calculated it. Respondents' Exhibit No. 262 carries "B" at the [fol. 1572] top. The showing is much the same as that set forth in Respondents' Exhibit 261. The rate from Purcell, Oklahoma, via Morris, Kansas, to Booneville, Missouri, is 33¢. The same rate applies via Prospect. This rate is 25½¢ less than the rates via Kansas City. The rates via Kansas City are 58¢.

All the other illustrations given on this exhibit are the same. I do not, therefore, refer to them. The next exhibit is Respondents' Exhibit 263, designated at the top "C", a one page statement in which I have taken rates on

stocker and feeder cattle from numerous points of origin in Kansas, Oklahoma, Texas and Colorado, to Liberty, Missouri. Referring back to Exhibit 259 you will see that Liberty, Missouri, is about 15 miles northwest of Kansas City. Stocker and feeder cattle will move from Del Rio, Texas, to Liberty, Missouri, for 51¢ over a distance of 947 miles. Coming to the Kansas City Public market they would travel 931 miles at a rate of 61¢. The witness then proceeded to recount various rate differentials prejudicial to Kansas City.

Exhibit 266, designated by the letter "G" is a comparison of our position, former and present, with St. Louis. The rates from Altus, Oklahoma, to New York via St. Louis are $1.09½. Under the rate change it becomes $1.08 via St. Louis; via Kansas City it used to be $1.06½, or 3¢ less than via St. Louis. Our rates have now become $1.22. We are now 14¢ out of line with St. Louis, whereas formerly we were almost on an equality.

Denver has long had a liberal transit privilege. Their [fol. 1573] livestock can be sorted, concentrated, graded, held for ten days, and then go out on the balance of the through rates. We have never enjoyed this privilege. The Interstate Commerce Commission's decision enlarges Denver's privileges. Exhibit 267 is a comparison of what happened when we try to compete with Denver in drawing livestock out of the district west of Denver. Livestock originating at Salida, Colorado, or in that neighborhood will go to Denver at 31¢ a hundred and move to Chicago for an additional 38¢ a total of 69¢. The charges via Kansas City are a combination of 53¢ in and 40¢ out, or a total of 93¢. Kansas City is 24¢ out of line with Denver. The balance out of Denver is 38¢. In shipping hogs out of the Missouri River to the eastern destinations for part of the journey we have to pay on a 24,000 pound minimum, that is, for the part of the journey up to the Mississippi River, while St. Louis and Chicago get their double journey through at a 23,000 pound minimum. The result is as shown in the right hand column, a penalty against us of $5.95 a car.

Exhibit 270 consists of a map and attached sheet and was prepared in mid summer, 1928, and introduced in the general livestock hearing before the Interstate Commerce Commission. The first sheet of the exhibit is a statement of

points with tariff references at which there are concentration privileges in this western territory. Morris, Kansas, is designated. It is 7 miles from the Kansas City stockyard. Topeka is 67 miles west of Kansas City on the Union Pacific, Santa Fe, and Rock Island. Livestock [fol. 1574] originating at Topeka, Lawrence, and Manhattan, and at any points along the Santa Fe out in that territory can come into Morris, be unloaded from cars, sorted, sold, be loaded into other cars and be forwarded to Chicago, St. Louis, New York, or any other points at the balance of the through rate. The Kansas City public market does not enjoy this privilege.

Exhibit 271 was prepared by me in June this year. It shows the additional points which have received the concentration privilege since those shown in Exhibit 270 were assembled. Twenty-two thousand pounds of stocker and feeder cattle moving from Hereford, Texas, to Bancroft, Iowa, through the Kansas City stockyard, would carry a rate of 74¢ a hundred, amounting to $162.80. These cattle moving via Morris, Kansas, would carry a rate of 47½¢ a hundred, or a total of $104.50. The differential against the Kansas City market is $58.30 on the car. Had these cattle originated at Clovis, New Mexico, the rate via Morris would have been 49½¢ per hundred and the total charge would have been $108.90. Via Kansas City the rate would have been 74½¢ and the total charge $163.90, a differential against the Kansas City market of $55 per car. If we succeeded in effecting a savings on a car of stocker and feeder cattle moving from Clovis, New Mexico, through the Kansas City market of $55 per car, that amount would be enough to pay the 2¢ assessment on 2,750 cars.

Cross-examination:

[fol. 1575] The farmer who ships his livestock into Kansas City pays the local rate from his home station at Kansas City regardless of whether he has through billing or not. That freight charge is paid out of the proceeds of the livestock by the commission man who sells the livestock.

All livestock markets, generally, are in competition with one another. Anything that we can do here to put our market a little nearer our competitors means an enhancement of price and values of livestock that come to Kansas City.

We hope to get the order of the Interstate Commerce Commission changed. In the matter of rates such as I have been describing Kansas City is no worse off than other of the so called Missouri River markets. The Missouri River markets, namely Sioux City, Omaha, St. Joseph and Kansas City, are all in the same boat. St. Paul is a little better off than we are because they have some concessions on out bound shipments, or a proportional rate basis. Chicago and St. Louis are better off than we are because they do not need these market privileges so badly. There have been attempts to get through rates from west to east on livestock, but they have been unsuccessful. The situation at Denver has just grown. It became established in the early days and has been continued. When the discriminations are removed which work against us, as in the case of Denver, Morris and Prospect and country points, we will be able to get our fair shares of the business and I apprehend that it will increase our receipts. What we want is a situation [fol. 1576] which will enable the public livestock market at Kansas City to do business on an equality with Prospect and Morris.

Redirect examination:

We hope that such order as might be issued would relieve the situation which is prejudicial to the volume of receipts at the Kansas City market. That hope, up to date, remains unrealized.

My hope is like that of any lawyer who believes in the soundness of his case and in the justice of the judgment of the tribunal that hears it, he expects to win. Whenever you put burdens on a public market you decrease the value of livestock at that point. This decrease in turn is reflected at concentration points and the nearby places. Values are forced down. It is an endless chain. Freight charges and other costs of marketing on the terminal markets have a tendency of driving livestock away from these markets to favored points.

Mr. C. E. Blomquist, a witness called by the respondents, after being sworn, testified as follows:

I am a resident of Kansas City, Kansas. I am connected with the firm of Martin, Blomquist and Lee Livestock Commission Company. I have been connected with the livestock industry for 31 years and with the commission business for 12 years. Before that I was employed by the Fowler and Armour Packing Company. I worked in the hog yard. At present I have charge of the hog department of Martin, Blomquist and Lee. I have direction of from [fol. 1577] four to six men all the time. I handle the correspondence growing out of the selling of most of the hogs that are consigned to our firm. The yardmen at times help with the selling, in the sense that they are sometimes out on the market getting the trend of things. When I am in the alley with a buyer and wonder what is going on on the outside, whether the market is getting stronger or whether it is weakening, I use the yardmen to find out. We all work together. Ninety per cent of my trips to the country are made upon request. Our firm has within the last year or so done quite a bit of stock pig business. We buy pigs here on the market. Recently there has been a large number of pigs from the country. Last year we purchased some 300 double deck carloads at country points. Most of this buying last year was done in South Dakota. I made some eight or ten trips up there by train and airplane in order to get up there and get the business done and get back. Those pigs went to all corners of the United States. When I am in the country we get a good deal of information about the character, integrity, and standing of the men in the country. We also learn something of truckmen. Our mailing lists are revised each day. It is composed of from 75% to 85% of people for whom we do business. Ninety per cent of the people on our mailing list have sent us consignments within the last two years.

According to Exhibit 114-63, the blue audit of our firm for the year 1931, an item of $2,678.53 stands opposite [fol. 1578] "Newspaper Advertising." This advertising is carried in the Daily Drovers Telegram. We have used that medium in keeping the people in our territory informed. We feel that we should help support the paper because it was sent to a good many of the customers of this market. We felt an obligation to patronize this newspaper and give it advertisements because it was the Kansas City livestock market paper. I think it would hurt our market very much

if the paper were to be discontinued. The blue audit contains an item of $1,867.17 for novelties, notebooks, and things of that character. We distribute a large notebook 3½ inches by 7 inches. These notebooks are used daily by most of the cattlemen and regular shippers. There is an item of $1,561.20 for signboard advertising. We put up signboards along the roads leading into the city. The item of $933.01 under "other expenses" was general in character. We do very little advertising at fairs. There is an item in Exhibit 115 of $6,456.95 for "travel." I think that from 75% to 80% of our travel and travel expenses in the country result from trips for the purpose of consulting with our shippers as to the value of their cattle, as to whether they are ready to go to market and as to what they will bring on the market and whether it is better to market at present or wait. There are many more trips in connection with the cattle business than there are in connection with the hog business. The expense per head on account of hogs is quite small. It has been very essential in the last three or four years that we keep in close contact with our customers in order to be sure about the [fol. 1579] title of cattle we handle. Had we not done this, either we or our insurance company would have sustained some heavy losses. The audit shows $7,939.55 allocated on account of the efforts and time of owners and employees spent in the country. We employ no solicitors; 95% of our work in the country is handled by members of the firm. Our cattle buyer buys cattle on the yards and goes into the country occasionally. He is in the yards about 80% of his time. We should have to employ him if he did no soliciting. Our firm sustains no additional out of pocket expense by reason of the time that our people devote to work in the country. Government Exhibit 115, page 31, indicates that 30.9 per cent of our total gross income had been devoted to business getting and maintaining expense. Under the superseded order of the Secretary of Agriculture an allowance is made for business getting and maintaining equal to 10% of the gross income. This would mean in the case of our company the elimination of at least $21,000 in expense for the year 1931. The elimination of two thirds of the expenses so classified would have seriously impaired our business and would have affected the services we render our customers. The elimination of this

amount from our expenditures by our firm alone would have resulted in a loss to our firm of customers. If all firms at this market stopped sending out this information, but other firms continued to send it out and continued to service their trade in this way, it would affect the volume of business at this market as a whole very much. We [fol. 1580] lost a good deal of our Nebraska business when we quit sending out the market paper. Our firm lost business to market agencies at Omaha, St. Joseph, or other places where the commission firms furnished them the daily market paper. I am sure that our advertising devoted exclusively to business getting would not total 10% of our gross income. I was one of the members of the respondent firms who met in connection with the preparation of Tariff No. 3, which became effective May 23, 1932. I was particularly interested in the tariff applicable to hogs. Our first consideration in working out that tariff was the price of hogs, compared to the price of other livestock and other commodities. The producer of hogs was getting a very small net return and we thought we should go as far as possible in order to help him out. Another competitive factor was direct buying. Inasmuch as producers were getting very little out of their hogs, direct buying had more of an appeal to them than before. We felt that we should help him in both ways. All of the respondents including the Farmers Union Commission Company and the Producers Commission Company, had representatives at meetings where there was a general discussion of the formulation of the new tariff. The first tariff that was suggested contained no clause requiring that plural consignments of hogs should be considered on the basis of the number of head in a single carload of one consignment. It is my understanding that Mr. Hobbs of the Farmers Union suggested that the schedule would be satisfactory to them if a [fol. 1581] limitation on a carload basis be established in determining the total headage in respect to plural ownership consignments of hogs. My firm had been applying the tariff that we had filed correctly. I was not personally advised of the change made at the suggestion of Mr. Hobbs before our firm filed this tariff. I was under the impression that the straight rate applied no matter how many carloads were delivered in one consignment. I was a member of the committee that made these rates and it had been

decided in committee that the rate would apply no matter how many cars or head were in the consignment, but in a final meeting, evidently, of the directors of the Exchange, or somebody, this was changed and it had not been brought to my attention. I did not attend this meeting. I am not a director of the Exchange. I do not know that it was a meeting of the directors. I know of no rule of the Exchange which relates to this particular tariff. The tariff was subsequently filed by our firm. We had sold stock for all of these people. We had sold for John Endorf, possibly 100 carloads. We had sold stock for the Randolph Farmers Union and the Frankfort Farmers Union, but not as much as for Endorf. I regretted that I had made the mistake and did all in my power to rectify it.

Cross-examination:

I have been a partner in my present firm for about five years. We have the same force of employees and assistants in the hog alleys as we had in 1931. I have an employed assistant who helps sell and from two to three yardmen in [fol. 1582] addition. The fifth yardman is employed during times of large volumes of receipts and in periods of light receipts his services are dispensed with. In 1931 we paid a party on a per head basis to bring our hogs over from the unloading chutes. For the past 4 months we have employed a regular man to bring them over. He works on a salary. The per head charge for the driving service was 3 cents a head, I think. For the first part of the year we paid 4 cents. We reached the conclusion that it would be more economical to hire a man on a salary basis than to pay for the driving on a per head basis. About 90% of the time of this man is spent in bringing drive in hogs over and about 10% in helping in the alleys. He goes to work at three o'clock in the morning. We pay him $125 a month. In connection with the determination of the financial condition of the owners and in determining whether the livestock is unencumbered, I should like to recite a particular case. One of our customers lived at Miltonvale, Kansas. We had always considered him a first class man of high character. One of our men was called into the vicinity to appraise some cattle. He obtained the information that this man had recently gone wrong. The very next week we received four loads of cattle from him and he asked

for the proceeds from them at that time. We refused his request and found out that the cattle were mortgaged either one or two times. We positively thought that had we not had that information, either we or our insurance company [fol. 1583] would have been out the total proceeds of those cattle.

We have a list of 20,000 names of which from seven to nine thousand are active. We keep the inactive list merely as a matter of record and in order that we may not throw away something that might be of value to us later on. We send no circulars to our inactive list. We discontinue their circular until they ask for it again or until we think they need the information. We do this in order to keep the cost down as low as we can. We hire our circulars printed. About three or four years ago we discontinued sending out the market paper from the Kansas City market. We found the next year that many of our customers on the border line territory, as we call it, in southern central Nebraska, where it was just as easy to go to the other markets as to come here, favored the firms at the other market from which they had been receiving the paper the year around. This statement applies particularly to Omaha, but I think we lost some business to St. Joseph, though I am not sure of it. The personal element and the character of the service rendered is very largely the primary element that draws business.

Our firm makes very few trips merely to solicit business. No man goes to the country except upon request to see cattle. Those requests are made by letter, by telephone, or in person. Such service is a factor in helping our customers and we feel that we have to keep up that kind of service. If we did not render it somebody from our market [fol. 1584] or another market would. Business would drift away from us to others, or to other markets. I was not chairman of the committee on hog rates, I was merely a member of it. The other members were Mr. Wolff of the Producers, Mr. Garrison of the Farmers Union, Mr. West of the Cassidy Southwestern, Mr. Canon of the Dixon Commission Company, and Mr. Byers of Swift and Henry. I am giving these from memory, I think the statement is correct. The committee formulated the hog tariff substantially as it is set forth in Tariff No. 3 except that the question of special ownership did not enter into it. The con-

sideration which caused the break at 130 pounds was the desire to give equitable treatment and not to charge too high a rate on light weight hogs. Mr. Lampe, our secretary and treasurer, filed this tariff for our firm. I think Mr. Lampe was consulted with respect to this schedule. I think Mr. Lampe was present when the schedule was drawn up. I O.K'd the hog schedule for our firm. Some one in our firm had something to do with the drafting of the cattle schedule. They were consulted and advised with.

Redirect examination:

We fight all the time to economize as much as possible in the conduct of our business. We exercise the best judgment we have. I recall that at the time that it was suggested that there be a meeting of the respondents, including the Farmers Union Commission Company and the Producers Commission Company, in regard to a change in rate [fol. 1585] schedule that there was at that time pending the matter of a conference with the men in the Department of Agriculture concerning rate matters. I was under the impression that the Farmers Union and the Producers had agreed to this schedule, that is in the meeting held before the Secretary's order of May 18.

Recross-examination:

There is considerably more work involved in the selling of truck in hogs than in selling seconds for the reason that we must get the drive in or truck in hogs at the chutes and bring them over and feed them and weigh them, while the seconds are generally sorted and are driven only a short distance into the alleys.

Redirect examination:

The country customer always receives preference over the dealer who sells seconds. The selling of seconds is fill in business.

Recross-examination:

We refuse to handle seconds when we are not in a position to handle them. When the pens allotted to me are full of hogs that have not been weighed, I tell a trader who

comes to me asking that I sell his hogs that I do not have pen room for them.

Redirect examination:

Direct buying has cut down the volume of our business.

[fol. 1586] Recross-examination:

Direct purchases by packers are made in large part from regular shippers and these shippers send all their livestock to these packers. When I worked for Armour there was an arrangement whereby the packer took all the livestock that one party could get to ship to them. We had certain shippers at certain towns and we always took all the stock that they could buy and ship to us, and there was always somebody in that town trying to obtain consent to ship.

Redirect examination:

Truck in hogs are a little more evenly divided throughout the week than rail hogs. The big end of our hog rail business comes on Monday, Tuesday, and Wednesday.

Recross-examination:

My assistant is fully competent to sell the better class of hogs. He has been selling hogs for twelve years.

BRYANT POOLE, a witness called by the Respondents, after being sworn, testified in substance as follows:

Direct examination:

I live in Kansas City, Missouri, and am one of the owners of the Poole, Dempsey & Rutherford Livestock Commission Company, a Respondent. I testified at the former hearing. The conduct of my business has become more difficult from a financial standpoint since the year 1929. I would [fol. 1587] say there has been an increase in the demand for service to shippers off the market in connection with appraisal work. We get out a market report once a week and send it to our entire list of customers, keeping them informed of the condition of the market for that week. In our firm we write a good lot of personal letters at the end

of each week to feeders we know have cattle they are ready to market within the next thirty days. Besides that we make trips to the country to see these cattle and advise with the owners about how he is feeding them, what he is feeding them, and the outlook for the future market as well as what they might be worth on the market at the present time. $31.00 expense would represent the newspaper advertising we did in 1931 as shown in Government Exhibit 114-48. We have just a few little items in the Kansas Stockman and the Drovers Telegram. The item of "Circular Letters" includes our weekly market card that we get out to our trade, and it also includes the postage on those circulars. I think the postage on these circulars now is 1½ cents. Ninety to ninety-five per cent of these circulars go to our established trade, people that we do business with at least once or more than once a year. If we pick up a name for any reason and add it to our circular list and do not have some reaction from that circular in three months we discontinue the name. If we had grass cattle from a man last August and have not had anything from him for the next two or three months we would drop him. Then when we begin to approach the grass season next August we put him on our list and carry him for two [fol. 1588] or three months until that season has passed. These letters are informatory in character as to market conditions and our view of it as to our immediate future. Very seldom do we make any reference in our circular bidding for a shipment. We just simply write out the market as it is for that particular week and if we have any reason for any forecast we would likely put that in. The item "Specialities and Novelties" covers books and pencils given to the trade. The item "Travel" amounting to $512.74 represents all the travel expense that I charged up to the business. That part of the travel amounting to $128.20 covering soliciting is entirely too high for our soliciting trips. That should be smaller and the travel covering appraisals should be larger. I don't think we have ever made a trip to the country with the idea of making it a soliciting trip. We either go out on a request of some feeder or we will go to the country to see some cattle that we know are about ready for market or may be made a little loan on. At the time we would be out, this fellow that we went to see might suggest that we go over to see a neighbor. A little part

of the trip from neighbor over to neighbor might be called solicitation, but as far as loading up and going to the country for a solici-ation trip I don't believe our firm has ever done any of it. I do not think soliciting work would run as heavy as $100.00. If we would allow five per cent on the real solicitation it would cover it. We do not get any soliciting out of the item covering "Exchange Soliciting" amount-
[fol. 1589] ing to $831.98, that represents the per car assessments and membership dues that we pay the Exchange. I know positively that at no time has the Kansas City Exchange solicited any business for our firm or for any other firm at the market. I do not consider the expense represented by the $831.98 as advertising expenses. I consider the transportation fund which we contribute to, and which is utilized in the employment of counsel and payment of expenses incident to rate proceedings related to freight rates, to be in the interest of the market as a whole. It is of special interest to the patron of the market and to the people operating to the extent that the lower you can keep the rates the more business would come to the particular market. It is more or less of a defensive proposition in order to prevent preferences being established favorable to the market. In our firm we do not employ a man who devotes his time to soliciting. These trips to the country for appraisal purposes are generally taken from Thursday afternoon until the next Monday morning. Our peak days in receipts during the week are Monday, Tuesday, and Wednesday. If we do not utilize this time in making these country trips for appraisal the livestock of our customers it would be idle time to some extent. If we were in town we would use up considerable of our time in writing letters to these people that we would be going to see. We cannot do the work as advantageously by letter as we can by seeing the cattle and seeing the way they are fed. The owner can-
[fol. 1590] not describe the cattle to you like you were there and see them. You cannot see the condition they are in and the amount of flesh that they carry. You would not know a thing about how he was feeding them or what he was feeding them. In selling the cattle if we know that a man has been a good feeder and his cattle prove satisfactory we will invariably call the buyers attention to the last bunch of cattle that we sold him in order to get him to give us a little stronger price for this particular bunch.

If we know that the feeder is not a very good feeder we keep still and don't tell. If he finds out that we tell him something that was not right at the time he would not pay any attention to us any more. If we misrepresent it will hurt our future sales. They will buy their cattle some place else or buy ours at a reduced price, and it will prejudice the sale of other customer's cattle. Salesmen positively will not falsely state the situation surrounding the feeding of cattle. In visiting our customers in the country we are able to learn of their standing in the community, their financial standing at the bank, and we have an opportunity to go in and talk to their bankers and find out whether the cattle are mortgaged at home or not, and who has the mortgage. I think that two per cent would be very liberal estimate of the total expense of my firm for advertising and other expenses directly incident to getting new business. One and one-half per cent would amount to $402.00 and that would cover it big. I assisted in the formulation of [fol. 1591] the new tariff which we filed effective May 23, 1932, in so far as it applied to cattle and calves, especially as regards the effect on our revenue. I made applications to this proposed tariff to our firm while this was under consideration. This was prior to the date of the Secretary's Order of May 18, 1932. Representatives of the various Respondent's in this hearing, including the Farmers Union and the Producers Commission Association, participated in the meetings and general discussions of a change in the tariff structure prior to May 18, 1932, and prior to the Conference held in Washington prior to May 18, 1932. Counsel for Respondents, as our attorney, participated in some of these hearings and meetings. It is my opinion that the tariff which was worked out on the headage basis is much better for most parties concerned than the old carload basis with the maximum charge on it. If I fed as much as a carload of cattle and was within a reasonable distance of the market, I would not ship my livestock to a salesman that had not visited the feedlot.

Cross-examination:

If a salesman would come out to my ranch to look at my cattle and would not agree with me on my feeding methods I might ship to somebody else that would not know anything about it and that would not be obligated to tell that

he really knew that Poole had not fed his cattle like he ought to. The work of selling cattle in the last two years has not changed so much more than we have had more lower markets. It is always harder to dispose of cattle satisfac- [fol. 1592] torily on a continued lower market. It takes more time. We might sell cattle for a man one week and deposit the money and everything would be all well, and the next month or next six weeks, we might sell another shipment and place his money the same as we did before and we would have it entirely wrong. There are more hazards, especially in the last year, then we have ever had from that standpoint. There are mortgages on livestock, and there are banks breaking that did not used to break. I do not think that our firm had any losses from that source in 1931. The only difference that we can really notice on the market is as regards the Farmers Union and the cooperatives. It has been a real problem for some of the old line firms to go out and maintain their established trade ahead of the invasion of those two agencies, one being allowed to rebate on their earnings, and the other one being able to borrow from the Government. An audit of our expense account will show that we are very conservative in our expenditures for advertising. All the advertising we do will be in the pencils and books and that amount there of $30 some odd, that covers just two or three little newspaper advertisements. We regard that sufficient to keep our name before the public for the class of business that we do. I would say that our firm will appraise 80% of the livestock that we sell. Not all of that is done at the request of the owner.

If our firm should curtail the amount of this appraisal [fol. 1593] work and the other firms continue to do it, it would cripple us a lot, because the firms would go out and appraise for them and they would ship to the other firms. It is necessary for us to do it as long as anybody does it. If they would make it prohibitive for anybody at the market to do that, we would not suffer any worse than anybody else would; but if the neighboring market would continue to do it, the market in general would suffer; the receipts would fall off.

If we would sell some cattle from the neighborhood of Manhattan, we would write 15 or 20 different letters that week during the grass season to different parties in that

neighborhood that would know about this particular party's cattle, as to what they brought and what they weighed on that week's market. To a certain extent our firm relies upon personal correspondence with customers for the purpose of getting information as well as giving information, in lieu of a personal visit to the country.

It is my observation that feeding methods in different localities are standardized only as regards neighborhoods. It is my experience that their feeding over in Kansas and Nebraska covers a wider variety than one would expect. The packer buyer relies quite a good deal on the locality from which livestock comes to form a fairly accurate judgment in regard to the way livestock had been fed and handled, especially as to periods of the year. Nebraska cattle late in the winter and early spring demand really better [fol. 1594] prices than they do early in the winter. Missouri cattle late in the fall bring a lot more money than they do early in the summer. It could be that the person who does not avail himself of appraisal service takes the view that the salesman on the market is able to get the full value without having seen the cattle. There could be what we call a "phoney" feeder who does not want anybody snooping around his place of business. He will get along better than if he had Poole come out and know too much about them. Comparing a load of fat steers which has been sent to the American Royal, and the same load of steers sent to my firm to be sold on the regular market, I would say that our salesman would have the advantage over the Royal livestock judge in placing that load of cattle, in that he would have had all of our information as regards the history of the man who fed them and how he fed them that a judge would not have, if he was judging a particular set of cattle, like the cattle of Dan Casement at Manhattan.

The object of the Exchange in its activities in connection with freight rate cases is to maintain a favorable position for the Kansas City market in its relation to the other livestock markets, and it may have some influence on the flow of livestock to the Kansas City market, to the extent that it does have that influence, our firm participates in the advantage as well as the patrons of the market. The activities of the Exchange are designed primarily to make [fol. 1595] the Kansas City market as attractive as possible

to shippers. It is its business to safeguard the interests of everyone that patronizes the market and try to keep it a healthy, wholesome place to do business.

There is not a large turn over in the customers of our firm. We will get a new customer through the recommendation of a pleased customer in the neighborhood. In our particular case I would say that is the chief way we get our customers.

I helped to apply this new tariff to our firm's business, and I think I spent some time in getting it changed around so that it would fit our business as well as other firms. The tariff was formulated by a committee and then distributed to the different firms to apply, after these suggestions were brought in and all this information picked up from the different firms. We applied the tariff to our business before we came down to Washington. That tariff was adjusted some after that. The tariff was submitted to us in final form for our approval. Our firm passed on it finally in regard to our filing it. The way we got hold of this particular schedule that we did file was by our working with different firms as to how it would affect their business as compared with our- and changing the rate a little here and a little there so as to make our average of the market effect as nearly as possible a 10% reduction over the old rat-o.

There was no particular committee of the livestock Exchange which took all these ideas and embodied them into the present tariff. It was just simply a group of members [fol. 1596] from the various organizations in the yards, including both the Producers Association and the Farmers Union, that worked with this group of men, or you might call it a committee to work out the different charges and apply them to their various businesses. It was the outcome of the work of our whole outfit down there. The bill for the printing of the tariff was absorbed by the various agencies concerned with the thing. The same tariff was printed and passed around for all of them to file. (Whereupon counsel for respondents stated that he would take the responsibility for having the tariff printed and that the charge for printing was charged up and handled as an expense incident to this rate case. He further stated that each firm voluntarily, without any action of the Exchange whatsoever or the adoption of any rules or regulations, saw fit to file it.)

All market agencies worked together and cooperated down there to work out this uniform tariff. The group that worked on this tariff would differ from day to day. The result of the work of one group today would go in with a different group tomorrow, and finally this thing was all gotten together and the different charges applied to the different firms' businesses. Finally we arrived at what we all thought would bring about a 10% reduction over our old rate. After all this information was gathered from all the various firms and everybody had agreed as to what was coming out of these various applications, there would have to be somebody that would dictate it and take it to the printer. I do not think there was but a little time while [fol. 1597] we were all working on this thing that we did not consult with Mr. Gage about what effect this part would have on it and that part and consulted with him when we were finally through with it as to the merits of the thing. It would be my opinion that Mr. Gage dictated it in the final, or rather, O. K.'d proof of that tariff before it went to the printers. I can positively testify that there was never any committee named by the Livestock Exchange to handle this particular tariff. It grew out of the trip that was made to the Department on their invitation to attend this conference, and when we came home with the information which we had, we started to work among the member firms doing business, to try to arrive at something that would be a substantial reduction from our old tariff. We would go up to the Secretary's office with that work, up in the Exchange Building, but there was positively nobody at any time presiding over those meetings as chairman. If I went up there with my sheet, I would talk over with representatives of other firms the results of our application of the tariff. I do not know how much paper we worked up until that thing was got out so that it would average a 10% reduction.

(Whereupon counsel for respondents accepted responsibility for deciding that the tariff was acceptable for final form and ready to be printed, stating that he was working with all these clients, talking, and consulting with them. He stated that it occurred on account of the rate proceeding and, in part, through the willingness of the respondents [fol. 1598] to make some sacrifice on account of their desire to keep away from further expense incident to the rate

proceeding, and to help their patrons by reason of the fact that a depression in livestock prices had occurred since the proceeding had commenced.)

Redirect examination:

Mr. Gage advised me and the other respondents that certain of the rate schedules in the former tariff under inquiry were discriminatory in character, and made the suggestion that a tariff on a headage basis and consignment basis might be the subject of consideration. Various of these respondents started to work on that basis, and that was the cause of our coming up and going over various rates formulated on that principle. Eventually we reached the result that accomplished for the market as a whole and all agencies as nearly a 10% reduction in gross revenue yield as we were able to accomplish. The rates in respect to hogs were reduced more than the rates in respect to cattle on account of the relatively greater reduction in hog prices than in ca[illegible]ices, and on account of the fact that direct marketin[illegible] was becoming more attractive to the direct shippers. That was more or less affected by the competitive character of the direct buying campaign of the packers around Kansas City. It was the hope that this tariff would meet the approval of the Secretary when it was filed. No rule or regulation was made by the Exchange in connection with this tariff.

A salesman would be in bad repute if he told a packer [fol. 1599] buyer the steer he was selling had had 120 or 160 days' feed on corn, alfalfa, and cottonseed cake and it developed after slaughter that the steers had been fed paraffin or vegetable oil or other substitutes injected to improve their appearance. What we are looking for are quality and percentage of yield.

Recross examination:

The judge of the livestock show has to consider these things. When we were working on the tariff, we used the office of the secretary of the Exchange as a gathering place to compare these different tests. Our secretary had no part in our group meetings whatever.

Whereupon the witness was excused.

MR. GROVER C. MAXWELL, a witness called by the Respondents, after being sworn, testified in substance as follows:

Direct examination:

I am connected with the Maxwell and Furnish Livestock Commission Company, known as Firm No. 7 in the audit. This is a partnership, Mr. Ben J. Furnish and I constituting the partnership. I have been in the commission business for 20 years and Mr. Furnish has been connected with the commission business 14 years. My business was farming before I went into the commission business. They have that mapped out wrong in Government Exhibit 115 showing that my firm spends 28 per cent of its gross income for business getting and maintaining expenses.
[fol. 1600] We advertise in little country papers around here and some in the Kansas City paper, and some in the Drovers. The item of "circular letters," amounting to $86.60, covers circulars and cards. We have a mailing list. We check it every year and people that come regularly we put on. There is not a name on our addressograph that didn't ship livestock to us in 1931. We write them a few letters and if they come back and show that they are coming back we put them on the list. They ask for the circular. We receive requests for these circulars. When we send these cards out we feel that we are giving them service in addition to the actual selling of their cattle on the market.

I do not know where they got the item of postage amounting to $504.50 classified as "advertising." I would think that in a year's time we would spend more than that for stamps. Yesterday we mailed out 82 or 83 letters. That included truck drivers and account sales, there being some 20 odd truck drivers. We had to pay a three cent stamp on each one of those and a two cent tax on checks. If we get a truck consignment in we send an account sale and a check to the owner. We also send a check to the truck driver so there would be a total of ten cents out of pocket cost in addition to stationery and other expense incident to the writing up of the account sales and the checks.

We carry about two thousand names on our mailing list. We send a market letter every month, and in the fall

[fol. 1601] sometimes twice a month. The postage on these circulars has been a cent and a half.

The item of "specialties and novelties," amounting to $126.15, covers pencils and notebooks. They were given to our customers.

The item of "other expense," amounting to $156.70, might cover small donations made to country fairs. I have a good many friends and acquaintances in the county south of Kansas City. I know 95 per cent of all the customers I have.

On these trips creating travel expense my territory is closer to town. I will take about half what my partner does, because his territory is farther away. I have my automobile and he has his. We do not charge depreciation on those automobiles to the business. We each wear our own car out and figure what money it takes if we have to stay at a hotel, and the gas and the oil, or if we have a breakdown and have to buy a tires we charge it to expense; otherwise, we pay our own expenses of the cars. We never go into the country after a stranger. It pays to go and look at customers' cattle. In the fluctuation of markets, we get a lot of orders in for just a kind of cattle, and they raise the price a dollar a hundred, and if the orders are not around there we have to make them better to bring the price. If I have some customers who can get their stock into the market pretty quickly during the week, and I have seen their livestock and know about it- condition, and if it appears on Monday that there are a number of [fol. 1602] orders in the hands of different buyers on the market, we will wire them at their expense to ship these cattle on a good market like that. If I had not seen the livestock and had knowledge of their condition, it would be a complete guess.

To a certain extent it helps in selling cattle and in getting a better price for them when I know how they have been fed and handled. When the buyer gets his kill back he can tell whether we have told the truth. If we misrepresent a bunch or two they will kick back on the rest of them.

The strangers a man picks up in this business are friends of some man that we know. When we go down to look at cattle, a customer will tell us about his neighbor who will ask us to look at his cattle, and we will go over and appraise them lots of times for our firm. It is generally a

case where they have enough livestock to feel like asking for the service. Of the $523.70 charged to travel and the $132 charged to automobile expense, I do not think two per cent in our case would be for new business.

I have never heard of the Exchange soliciting any business for our particular firm. We are generally reasonably busy the first part of the week and go out the last part of the week. Lots of times, if our business on the market needs attention, we postpone our trips to the country until later in the week. We go out on Sunday. So far [fol. 1603] as our firm is concerned, our time would either be utilized staying here in town and be more or less stand by time if we did not go to the country.

If we dealt with strangers instead of friends and acquaintances it would almost take a man in our business to keep checking up on them. It would slow up the business. We try to keep in touch with our men to know if they have to have a recommendation for a money loan so we could really tell them what we think of the man. Last week a man came to me over in the hog yards and I did not know him. I questioned him as to who hauled his livestock and where he lived. I was acquainted in that country from which he came. I was able to check up on the accuracy of his statement.

Cross-examination:

I sell hogs. The man who came to me in the yards wanted to take his scale ticket to the office and get his proceeds. We don't make any special trips out to see small lots of livestock that come by truck. When I have been to look at livestock and know the owner, know his reputation in the community in which he lives, our risk of losses from selling mortgaged or stolen livestock is much less. The buyers are practically through on Thursday, and all these fellows that come from a distance to buy around here would not come in the last part of the week.

The trucked in livestock will come more freely the first part of the week, but it holds out better during the last [fol. 1604] three days of the week than rail shipments.

The carrying of advertisements in local country newspapers, sending out circular letters to our customers, giving them notebooks and pencils, going out to appraise livestock in the country, and talking with the customers

about their livestock are necessary to the holding of our business. I would expect to see my business slipping away if we did not do those things and the other firms did. I spend money for the purpose of getting a result in additional profit that would come from additional volume.

It would not be an intelligent way to try to get business for a man to stop at a farm and introduce himself to the farmer and ask him to ship livestock to our firm. I would not think that any of the commission men go at it that way. We go at it in a more intelligent way of being helpful to the man in the country, expecting to profit from that helpfulness.

The livestock exchanges here at Kansas City do*es* carry on activities and makes efforts to attract business to this market in competition with St. Joseph and Omaha and other markets. That is done for the general benefit of all the commission men and the exchange leaves to each firm to get out of that business what they can.

I would not say that you can get any more for livestock that you have seen in the country than you can for livestock that you have not seen, but when you have seen them [fol. 1605] you can tell the man about what to expect of this livestock. It helps if we can tell the packer buyer that the livestock have been well handled and well fed. We do not always tell the buyer unless he pins us right down to it, but if we do tell him we give it to him straight. We would not tell him anything that we did not have to in a case where the livestock had been improperly fed in the country. We would not mean to hurt the sale. We might change his conversation and not tell him anything. The buyer has to go on his own judgment in buying to a certain extent.

We put into effect salary reductions in the year 1931. The reduction was about 15 per cent of all employees. It became effective in August, 1931. We have made no salary reductions this year. We reduced our own salaries and the expenses for telephone and water. We discontinued the telephone extensions into the yards in 1931.

Redirect examination:

Our telephone charges during June or July, 1931, were increased by reason of the increased tax on telephone services. We had the increased expense due to the tax on

checks and increased postal rates. We have not had any rent reductions.

I cannot see any reductions in other expenses such as stationery and that sort of thing over last year. If the Exchange were to put a rule requiring a man to stay on the market all the time, it would lock the market up. If [fol. 1606] our firm individually attempted to do such a thing it might as well quit.

All these activities of the Exchange were designed primarily to benefit and attract the people who might consign livestock to Kansas City. That is true of our own individual efforts. We endeavor to attract business by being of service, either on the market or off the market, to our friends who are our customers. Where cattle have been well fed it is of advantage to me to be able to state to the buyer that I know the feeder and how these cattle have been fed in connection with interesting him in making a good offer. With respect to the different grades of cattle, of lesser value, the market activities on one grade will vary from that on other grades from time to time.

When I see that the market is going to be active on a particular grade, I endeavor to get in contact with customers and get them to bring their cattle on that good market. If I did not know how to place their cattle, I would be handicapped in my ability to advise them when to ship. I frequently spend money personally in connection with our trips, which is not shown on the books of the firm.

Recross-examination:

It is not my idea that all livestock would be diverted away from Kansas City, if all the commission men at Kansas City would stop going to the country, but I would naturally think that the man in the country would hunt some [fol. 1607] one else. I think it would hurt this market. Everybody that could get to another market would certainly go to it. The shipper changes things by knowing the man that is selling his livestock and knowing that he will get the market. A man, generally speaking, could get just as good a price for his livestock on another market as he could here at Kansas City. If all commission men everywhere stopped going to the country, I think we would go back to the days when the owners would start out with the livestock and look for a buyer. There would not be as

many livestock shipped. The owners would not be informed. The packers would naturally beat them all they could.

Redirect examination:

There would be a constantly increasing percentage of livestock moving direct to the slaughterers under such a situation. Small, uninformed men would get a mighty bad deal and some few men would get a reasonably good deal. The producers of off grades of livestock and the small producers of livestock would be almost eliminated.

(Whereupon the witness was excused.)

Whereupon it was agreed by Government counsel that he would recommend to the Department that a statement as to the principal amount of bonds given to protect shippers' proceeds by the various respondent firms as of December 31, 1931, would be included in the exhibit to be pre- [fol. 1608] pared by the Department in connection with the total gross proceeds of livestock sold and produced as shown on the annual reports Form PS-3.

Whereupon it was agreed by counsel for the respondents and the Government that if there had been a failure to taken at the former hearing, the testimony, and exhibits, and the whole body of the evidence represents a fair typical cross section of the business of these respondents.

(Whereupon respondents rested their case.)

Government Exhibit No. 139

Whereupon Government offered in evidence Government Exhibit No. 139, the same being a letter from J. C. Vance of John Clay and Company addressed to John B. Gage dated November 1, 1932, furnishing information which he was asked to furnish when he was on the witness stand.

Whereupon it was agreed by counsel for respondents and the Government that all the evidence in the record offer any exhibits, the record should show that they shall be considered as having been received subject to such objections as have been made.

(Whereupon counsel for the respondent stated that he would want to file a brief if that course of procedure would

meet the approval of the Secretary. He also stated that he would continue to demand that the Secretary hear personally the argument of the evidence in behalf of the individual respondents, or at least have some definite course of [fol. 1609] procedure adopted whereby the examiner, or some one else should formulate a report on the evidence so that the respondents could have the character of hearing and right to present their side of the issues in this case, which they believe the law entitles them to.)

Whereupon the hearing adjourned on November 16, 1932.

[fol. 1610] IN UNITED STATES DISTRICT COURT

ORDER APPROVING NARRATIVE STATEMENT OF EVIDENCE AND STIPULATION RELATIVE TO TRANSMITTING ORIGINAL EXHIBITS

This cause coming on for hearing on the application of petitioners (appellants) for an order approving the narrative statement of evidence filed herein and certifying original exhibits to the Supreme Court of the United States, and the Court being advised in the premises, it is

Ordered

(1) That the narrative statement of evidence filed herein, and which, with the original exhibits offered in evidence and to be certified separately to the Supreme Court of the United States, is a true and complete statement of all the evidence introduced in this cause and comprises all the evidence offered and received on the trial hereof, as agreed upon between the parties, be and hereby is approved.

(2) That the Clerk of this Court, in preparing the transcript of the record on the appeal herein to the Supreme Court of the United States, shall certify to said Court and forward the exhibits referred to as Exhibit "A" attached to the stipulation of the parties, filed January 4, 1936, annexed hereto, as original exhibits, not as part of the transcript of record but separately therefrom, and that any party hereto may refer to said original exhibits in their briefs and arguments with like effect as though they were printed as part of the record.

Dated, January 4, 1936.

Arba S. Van Valkenburgh, Judge. Albert L. Reeves, Judge. Merrill E. Otis, Judge.

[fols. 1611 & 1612] IN UNITED STATES DISTRICT COURT

STIPULATION RELATIVE TO TRANSMITTING ORIGINAL EXHIBITS —Filed Jan. 4, 1936

It is hereby stipulated by counsel for both appellants and appellees in the above cases that the exhibits placed in evidence in the hearings before the Secretary of Agriculture of the United States and/or this Court that are described herein on statement marked Exhibit "A", and identified thereon as appellees' or appellants' exhibits, shall be certified and transmitted by the Clerk of this Court to the Clerk of the Supreme Court as original papers and not printed as a part of the record on appeal and that any party hereto may refer to said original exhibits in their briefs and arguments with like effect as though they were printed as a part of the record, and that this Court may make such order relative to the transmittal, safe-keeping and return of such original exhibits as to it may seem proper.

Dated December 19, 1935.

Frederick H. Wood, John B. Gage, Attorneys for Petitioners, Plaintiffs and Appellants. Wendell Berge, Attorney for Respondents, Defendants and Appellees.

[File endorsement omitted.]

[fol. 1613] EXHIBIT A TO STIPULATION

Petitioners' (Appellants) Exhibits Initially Offered in Evidence at the Hearing on Application for Permanent Injunction Before the Statutory Court

Petitioners' Exhibit 1.—Schedule comparing the revenue yield of rates prescribed in order of June 14, 1933, and those set forth in preceding tariffs, Nos. 2 and 3 respectively, as reflected by applying the prescribed rates to transactions actually handled throughout the year 1931 by 57 market agencies remaining active at end of that year.

Petitioners' Exhibit 2.—Analysis of selling commission revenue derived from application of Secretary's Order (June 14, 1933), schedule of rates to 1931 volume of petitioner agencies. (Kansas City Market.)

Petitioners' Exhibit 3.—Comparison of gross selling and buying commission revenues, first 5 months, 1932 and 1933, as per showing by agencies' books (all species).

Petitioners' Exhibit 4.—B. A. I. Docket No. 311, order of June 14, 1933—confiscatory aspect of the prescribed rates, by species, showing net amounts available to compensate owners for services rendered, on basis of Government costs—comparative revenue yield of the prescribed rates determined by applying same to the volume handled by individual firms in 1931.

Petitioners' Exhibit 5.—Nine firms handling 42% of 1931 volume (equivalent carlot basis)—net returns to owners under rates of June 1933 order based on revenue test using 1931 volume and costs of that year—selling and buying service, all species.

Petitioners' Exhibit 6.—21 firms handling 72.5% of 1931 volume (equivalent carlot basis)—net returns to owners under rates of June, 1933, order based on revenue test using 1931 volume and costs of that year—selling and buying service, all species.

Petitioners' Exhibit 7.—Comparison of so-called "reasonable" unit-costs per order of June 14, 1933, and total costs as found by Government accountants and as claimed by respondents (59 agencies) for the test year 1931.

[fol. 1614] Petitioners' Exhibit 8.—Comparisons of Secretary's cost allowances, and such allowanees equated to reflect revenue yield, with experienced costs of 1931 for 9 petitioner agencies which handled 42% of volume (exclusive of that handled by cooperative agencies) being those petitioner agencies handling the largest volume as shown at Page 39 of order, to-wit: Nos. 46, 51, 54, 59, 63, 73, 82, 83, 84.

Petitioners' Exhibit 9.—Memorandum comparing the Secretary's required performance in selling and buying with actual performance—1931.

Petitioners' Exhibit 10.—Business getting and maintenance costs—1931—59 agencies, Kansas City, Market—analysis of amounts so classified by Government and by petitioner agencies.

Petitioners' Exhibit 11.—Charts showing trend of beneficial effects of agencies' country auxiliary selling service

on customers' sales proceeds from yearlings and fat cattle, Kansas City Market, 1931.

Petitioners' Exhibit 12.—Comparison of unit costs for selling and buying services combined—petitioner agencies costs as Government accountants costs for 9 agencies handling 42%, and 21 agencies handling 74% of volume on equivalent car-lot basis, and for 59 petitioner agencies, Kansas City Market, year 1931.

Petitioners' Exhibit 13.—B. A. I. Docket No. 311—confiscatory aspects of the June 14, 1933, order's rates, as to the 11 leading firms and as to the 23 leading firms per page 39 of order.

Appellees' Exhibits Initially Offered in Evidence in the Hearing Before the Secretary of Agriculture

Exhibit	
1	Kansas City Live Stock Exchange Tariff No. 1, with supplements 1 to 5, inclusive, and Tariff No. 2, with supplements 1 to 3, inclusive. Also copies of supplements filed by various individual respondents.
1-A	Certified copy of the tariff filed individually by the market agencies at Kansas City, effective January 1, 1930.
2	Tariffs filed by order buyers at the Kansas City market.
3	Tariff No. 1 and Supplements Nos. 1 and 2 thereto filed by the Farmers Union Livestock Commission.
4	[fol. 1615] Tariff No. 1 and Supplement No. 1 thereto, and Tariff No. 2 and Supplements Nos. 1 to 3 thereto, filed by the Producers Commission Association.
5-A to 5-J—	Tariffs of market agencies at St. Joseph, Denver, Wichita, Chicago, National Stock Yards, Sioux City, Fort Worth, and Oklahoma City, and the Secretary's order in Docket No. 143.
100-A	Copy of order of Secretary of Agriculture of May 18, 1932.
101	Tariffs filed by market agencies, other than order buyers and cooperatives, since previous hearing.

Exhibit

102 Tariffs filed by Harry Conley, W. H. Cripe, Feaman & Nolan, Graybill Stephenson, Great Western Order Buying Co., and K. L. Peterson & Co.

103 Tariff No. 4 of Farmers Union Livestock Com. Co.

103-A Tariff filed by Farmers Union Livestock Com. subsequent to Tariff No. 4.

104 Tariffs filed by the Producers Commission Assn.

105 Tariffs filed by market agencies at those stockyards covered in Government Exhibit 5 since the previous hearing.

9, 9-A to 9-B—
Rules and by-laws of the Kansas City Live Stock Exchange.

109-C to E, inclusive—
Amendments to the rules and regulations of the Kansas City Live Stock Exchange since the previous hearing.

13-A Car receipts for the year 1929 of the commission firms, packers, and miscellaneous receipts.

13-B Car receipts of cattle for commission firms, packers, and others by months for the year 1929.

13-C Same information as to hogs.

13-D Same information as to sheep.

113-E Receipts of livestock by months, by firms, of market agencies and others, during the year 1930 at the Kansas City Stock Yards.

113-F Same information for 1931 as shown in Ex. 113-A.

113-G Same information for months from January to August, 1932, as shown in previous exhibit.

14, 1-86 (4 vol.)—
Audits of the individual respondent firms.

114-1 to 107—
Individual audits of respondent commission firms.

114-8 Audit of McDonald Livestock Commission Company.

15 Bachman's cost study.

115 Cost study prepared by Government auditor.

115-A Differential study of operations, income and cost.

115-B Questionnaire.

16 Compilation of receipts of livestock at the Kansas City Stockyards by days, weeks and months for [fol. 1616] the year 1929 and January to June, inclusive, for the year 1930.

Exhibit

Compilation showing total direct hogs passing through the Kansas City Market, the number of hogs going to the Mistletoe Stockyards, and the total hogs going to the packers outside of the yard.

116 Receipts of livestock at Kansas City Stockyards by days, weeks and months, years 1930, 1931, and January to September, 1932.

16-B Analysis of direct cost by months for 1929.

17, 17-A—

Compilation showing purchases of cattle, calves, hogs, and sheep by packers and butchers for the year 1929, and the first six months of 1930.

18 Compilation showing livestock held over in the Kansas City Stockyards by days, weeks and months for the year 1929 and the first 6 months of 1930.

19 Compilation showing the disposition of livestock received at the Kansas City Stockyards.

20-A-B-C—

Compilation showing number of cattle, calves, hogs and sheep, respectively, weighed at the Kansas City Stockyards during the year 1929.

21 Compilation showing the animals slaughtered under Federal meat inspection at Kansas City, Mo., for the years 1919 to 1929, inc.

121 Animals slaughtered under Federal Meat Inspection, Kansas City, Mo., covering years 1930, 1931 and January to September, 1932.

116-A & B—

Kansas City Livestock Market, direct hogs.

117 & 117-A—

Daily purchases of cattle, packers and butchers, for year 1930.

118 Livestock held over, Kansas City Stockyards, for the years 1930, 1931 and January to September, 1932.

120-A-B-C—

Livestock weighed at the Kansas City Stockyards covering the years 1930, 1931, and January to September, 1932.

22 Description of trade territory.

122 Study by States of Livestock population for years 1920 to 1932, inc.

Exhibit

23-A-B-C—
Maps, Chicago trade territory.

24-A-B-C—
Maps, Omaha trade territory.

25-A-B-C—
Maps, National Stock Yards trade territory.

26 Compilation of figures for all 10 markets, such as included in Gov't. Exhibit 22 for Kansas City.

29 Advertisement in the Kansas City Star relative to the Kansas City Stockyards.

32 Number of head of different species arriving at Kansas City on a per-car basis for years 1920 to 1930, inclusive.

34 Actual losses from all sources of respondent market agencies during 1929.

36 [fol. 1617] Amplification of Roberts' time study.

138 Stebbins' work sheets showing type of form used for testing Tariff No. 3.

Appellants' Exhibits Initially Offered in Evidence in the Hearing Before the Secretary of Agriculture

Exhibit

1 Relation of gross commissions to gross sales and purchases.

2 Report of the Committee on Agriculture and Forestry of the U. S. Senate, in Calendar No. 1272.

3 Market practice agreement.

4 Letter of Mr. Legge, Chairman of Farm Board, to William Butterworth, President of The National Chamber of Commerce.

7 Chart showing grades and classes of sheep.

8 Chart showing progress of the Kansas City market.

12 Mimeographed letter of the Producers Commission Association, a credit statement, and form of application for loan.

13 Classification of different grades and qualities of hogs.

16 Copy of market letter of the Producers Commission Association under date of December 11, 1930.

18 Page 40 of technical bulletin of the U. S. Dept. of Agriculture, "Cooperative Marketing of Live-

Exhibit

stock in the United States by Terminal Associations."

19-A-E— Commission tariffs of livestock exchanges at Baltimore, Cincinnati, Pittsburgh, Lancaster and New York and Jersey City introduced in evidence.

20 Bulletin No. 38 of the Bureau of Railway Economics.

21 Market agreement used by the Inter-Mountain Livestock Marketing Association.

24 Copy of arbitrators' award in Dockets 11, 12, 13 and 14.

27 Copy of letter from the Metropolitan Casualty Company.

28 Letter to the Metropolitan Casualty Company.

29 Description of methods and practices.

30 Blue print map showing locations referred to in Exhibit 29.

31 Letter addressed to chairman of the rate committee in answer to the letter addressed to the Hartford Fire Insurance Company.

Letter addressed to W. B. Osborne, manager of the Hartford Fire Insurance Company attached and made part thereof.

32 Appraisal of value of owners.

34 Classes of cattle.

35 [fol. 1618] Seven pages showing number of head of meat animals received by days during 1929 at Kansas City.

36 Rail receipts and truck receipts by species, 10-year period ended in 1929.

37 Shows fluctuation in volume of all species of meat animals 1913 to 1929. Fluctuations by species 1913 to 1929.

38 Yearly receipts of number of head of meat animals at Kansas City market 1890 to 1930.

39 Relative retail food prices of Kansas City, Omaha, and in the United States by months for 3 years ended December, 1929.

40 Relative price of livestock on foot and poultry, and wholesale and retail food meats in the United States and gross yield of the Kansas City

Exhibit

livestock commission rates, 1913 to 1929. Agreement that either party could refer to Bulletin No. 491 of the Dept. of Labor.

41 Carrying capacity of stock cars, 1913 to 1928, incl.

42 Copy of material furnished by Bureau of Animal Industry.

43 Percentage relationship between commissions paid by seller and proceeds of sale on 10 terminal markets, 1924 to 1929, respectively.

44 Comparison of yield of old and new tariffs from 1913 to 1929.

45 Relates to level of farm wages, union wages, general wages at hourly rates, excluding agriculture, cost of living in the United States and at Kansas City, approximated gross revenue of Kansas City Livestock commission rates for period 1913 to 1929, basing 1913 as 100%.

46 Bulletin No. 491 of Bureau of Labor Statistics, showing statistics have been employed in adjudicating wage controversies.

47 "Ratio of commissions earned to gross market value of sales and purchases made on the Kansas City market by all firms, including cooperatives, 1926 to 1929."

48 Time study to determine difference in time required on a unit basis to handle different species of livestock arriving by rail, straight and mixed, of single and plural ownership, and trucked or driven or planted.

49 Basis for accruing depreciation on depreciable property and amount of accrued depreciation.

50 Summary of sundry insurance accruals other than fire insurance.

51 Calculation of cost of fire insurance on office furniture and fixtures and equipment.

52 Summary of invested capital.

52-A Affidavits as to sale of membership.

53 Statistical study relating to unit cost of service rendered by 65 Kansas City Livestock agencies 1929.

55 [fol. 1619] Chart 29, U. S. Dept. of Agriculture September, 1929, "Beef Cattle Outlook Charts," represents cattle receipts at Kansas

Exhibit	
	City years 1926 and 1927; and Chart 15, same publication, represents cattle receipts at Chicago monthly, showing fluctuations in volume on the two markets.
56	Graph and supporting data remarketing cost of agricultural commodities other than livestock at Kansas City.
59	Penal sum of bonds carried by market agencies 1929.
60	Active market agencies at Kansas City.
	Letter of John B. Gage to J. C. Brooke, Feb. 19, 1931.
	Letter of Solicitor to J. B. Gage, March 5, 1931.
61	Inactive market agencies at Kansas City.
	Letter of John B. Gage to J. C. Brooke, Feb. 19, 1931.
	Letter of Solicitor to J. B. Gage, March 5, 1931.
63	Three sheets and graph remarketing of cattle, hogs and sheep from several states tributary to Kansas City, in relation to proportion thereof marketed at Kansas City for 11 years, 1920 to 1 1930. Oral argument Mr. Gage, March 27, 1931.
200	Working papers covering Mr. Bachmann's third test of Tariff No. 3.
204	Appraisal of the value of owners' services.
205	Total receipts of cattle, calves and sheep at Kansas City Stockyards, showing percentages sold and percentages of "throughs."
206	Comparison of unit costs per head and unit revenue of Tariff No. 2 for 1931.
207	Final cost statement recapitulating elements of operating cost, including return on investment showing unit cost per head.
208	Sample computations—adjustments within the species costs with respect to ability to pay as measured by average gross proceeds—selling service only.
209	Recapitulation of salary and wages expense distributed to arrival accounts.
210	Consolidation of owners' and non-owners' salaries by general accounts.
211	Distribution of owners' salaries by firms.
212	Distribution of non-owners' salaries and wages

Exhibit

by firms for 1931, as shown on Government questionnaires, with exceptions.

213 Distribution of selling portion of all salaries and wages to arrival accounts on the basis of the number of head plus number of drafts.

214 Number of head plus number of drafts for distribution of selling salaries to arrival accounts.

215 Distribution yarding (selling) portion of all salaries and wages to arrival accounts on basis of the number of drafts.

216 [fol. 1620] Distribution of total yarding salaries to selling and buying on basis of relative number of drafts by species.

217 Number of drafts by species for distribution of total yarding salaries to selling and buying.

218 Distribution of office salaries to selling and buying by species and to arrival accounts on the basis of number of account sales, purchases, and drafts, respectively.

219 Number of drafts, excluding buying and per cents for distribution of office salaries (selling) to arrival accounts in each species.

220 Number of account sales and purchases, including seconds and splits, and per cents for distribution of office salaries to species and to selling and buying.

221 Distribution of B. G. & M. salaries, element "A", circulars, correspondence, etc.—selling portion only on the basis of the number of head to rail and drive-ins only.

222 Distribution of B. G. & M. salaries, element "A", circulars, correspondence, etc., to selling and buying by species on the basis of the number of account sales and purchases.

223 Number of account sales and account purchases, excluding seconds and splits, and percents for distribution of B. G. & M. salaries, element "A", to selling and buying.

224 Distribution of B. G. & M. salaries—element "B", country trips, selling service only, to rail and drive-ins only—on basis of number of head.

225 Distribution of B. G. & M. salaries—element "B", country trips, selling service only, to species—

Exhibit

on basis of number of account sales.

226 Number of account sales, excluding seconds and splits, and per cents for distribution of B. G. & M. salaries—element "B" to species.

227 Recapitulation of operating expenses (other than salaries and wages) distributed to arrival accounts.

228 Distribution of B. G. & M. expense—element "A", circulars, correspondence, etc., selling portion only—on basis of B. G. & M. element "A" salaries (number of head).

229 Distribution of B. G. & M. expense—element "B", country trips, selling service only—on basis of B. G. & M. element "B" salaries (number of head).

230 Summary of expenses (adjusted) by general accounts.

231 Reconciliation of expenses with Government cost study—showing additions and deductions by general accounts.

232 [fol. 1621] Depreciation accruals, on basis of reproduction cost new, property owned and used, by livestock commission agencies, Kansas City market, 1931.

233 Distribution of risk expenses (including sundry insurance) to arrival accounts.

234 Reconciliation of risk expenses with Government cost study, showing additions, deductions, and eliminations.

235 Reconciliation of risk expense with Government cost study, showing accounting for difference.

236 Public liability insurance.

237 Workmen's compensation liability insurance.

238 Mortgage and theft insurance.

239 Invested capital—summary, and equivalent of 8% annual return thereon.

240 Invested capital—sound value (reproduction cost new less depreciation) of physical property owned and used.

241 Invested capital—investment in materials and supplies (excluding feed) as per Government audits, Exhibit A & B.

Exhibit

242 Invested capital—cash working capital for operations.

243 Invested capital—cash working capital for sales and purchase transactions.

244 Invested capital—investments in methods and practices employed in yard and office.

245 Commission revenue, per head, by firms, by species, by arrival accounts—from gross revenue and number of head from P & S Exhibit, 1931.

246 Gross commissions earned, 1931—from P & S Exhibit, pages 42-45, inc.

247 Number of head, by firms, by species, by arrival accounts, 1931—from P & S Exhibit, pages 65-68 inclusive.

248 Relation of Tariff No. 3 commission revenue by arrival accounts (and cattle by weight classes) to gross proceeds of sales, 1931, for 14 firms.

249 Average gross proceeds per head by weight classes per Tariff No. 3, by firms—cattle and calves only.

250 Relation of selling commission revenue under prevailing Tariff No. 3 to gross proceeds of sales, by species, year 1931, for 16 firms.

251 Comparison of actual revenue earned in 1931 under Tariff No. 2 with revenue which would have been earned, with same volume had Tariff No. 3 been in effect—selling service.

251-A A sample of account sales analysis.

251-B Copy of punch card.

252 [fol. 1622] Tariff No. 3 commission revenue on relative basis, respondents' service costs including return on investment, and profit or loss for 59 firms collectively—1931.

253 Apportionment of arrival account costs (per respondents' Exhibit 207) to weight classes—cattle and calves—selling service only.

254 Cattle and Calves only—analysis of commission revenue resulting from the application of Tariff No. 3 to 1931 volume by arrival accounts, eight classes and elements of charge.

255 Comparison of elements and conciliation of dif-

Exhibit

ferences between respondents' cost study and the Bachmann cost study.

256 Drovers' Journal Yearbook, 1931.

257 Supplements' Exhibits 19-A to 19-E, inclusive, which were copies of tariffs effective at other markets and introduced at the previous hearing.

258 Compilation of gross proceeds of purchases and sale of livestock for the year 1931 by the market agencies at the Kansas City market, as contained in the annual reports of the market agencies filed with the Secretary of Agriculture pursuant to the provisions of the Packers and Stockyards Act.

[File endorsement omitted.]

[fol. 1623] IN UNITED STATES DISTRICT COURT

NOTICE OF LODGMENT IN CLERK'S OFFICE OF STATEMENT OF EVIDENCE TO BE INCLUDED IN THE TRANSCRIPT OF RECORD ON APPEAL AND PRÆCIPE FOR APPEAL TO THE SUPREME COURT OF THE UNITED STATES, WITH MOTION FOR AN ORDER APPROVING SAID NARRATIVE STATEMENT OF EVIDENCE AND PRÆCIPE, AND CONSENT THERETO BY APPELLEES—Filed Jan. 4, 1936

To the Above-named Respondents, Defendants and Appellees, United States of America and the Secretary of Agriculture, or Wendell Berge, their Attorney:

Please take notice that the narrative transcript of petitioners, plaintiffs and appellants in the above cases as consolidated covering that part of the oral testimony in evidence at the hearings on these cases, and comprised of four typewritten volumes thereof, was this day lodged in the office of the Clerk of the United States District Court for the Western Division of the Western District of Missouri, for your examination, together with a schedule of exhibits which are to be printed as a part of the narrative transcript in these cases, and that on the 4th day of January, 1936, at 10:00 A. M., or as soon thereafter as counsel may be heard, the above-named petitioners, plaintiffs and appellants will urge the Honorable Merrill E. Otis, in his Chambers in the Federal Building Ninth and Grand Avenue, in Kansas

City, Missouri, to approve said narrative transcript and you, and each of you, are hereby notified to serve upon me, as attorney for said petitioners, plaintiffs and appellants on or before the 4th day of January, 1936, your objections and proposed amendments, if any, to said narrative tran-
[fol. 1624] script.

Præcipe

Please take further notice that the said petitioners, plaintiffs and appellants designate the following as portions of the record in these cases to be incorporated into the transcript on their appeal herein to the Supreme Court of the United States:

1. Bill of Complaint of Fred O. Morgan, doing business as Fred O. Morgan Sheep Commission Company, v. United States of America and Secretary of Agriculture, in Equity No. 2328, duly verified and filed in this court on the 19th day of July, 1933, together with Exhibit "A", being a copy of the order of the Secretary of Agriculture of the United States dated June 14, 1933, which is involved in these proceedings, and Exhibit "B" being a copy of petitioners, plaintiffs and appellants for re-investigation and re-hearing by the Secretary of Agriculture in the proceedings then pending before him and Exhibit "C" being a copy of a schedule of comparison of so-called "reasonable" unit-costs per order of June 14, 1933, and total costs as found by Government accountants and as claimed by respondents (59 firms) for the test year of 1931, and which said Exhibits "A", "B" and "C" were filed with said bill of complaint as parts thereof.

2. Statement that the petitions filed in the remaining cases as consolidated, being Dockets Nos. In Equity 2329-2378, inclusive, are identical with the petition set out in the
[fol. 1625] said above case No. 2328, except as to differences in the name of the respective individual plaintiff or plaintiffs and variations in dollars or percentages appearing in Section VIII. of the said respective petitions in said several respective remaining cases Nos. 2329 to 2378, inclusive, with the name or names of the respective plaintiffs in these respective remaining cases, the docket numbers of the respective suits and the specific amounts or percentages set forth in Section VIII. of said respective remaining petitions.

3. Temporary restraining order filed July 22, 1933, restraining the enforcement of said order of said Secretary of Agriculture dated June 14, 1933.

4. Motion of Defendants to strike portions of the bill of complaint in each of said cases, filed September 5, 1933.

5. Court's memorandum and order overruling defendants' motions to strike, filed September 9, 1933.

6. Order setting aside said order of September 9, 1933, filed September 13, 1933.

7. Order continuing in force said temporary restraining order, filed September 19, 1933.

8. Order on defendants' motion to strike said bills of complaint, sustained in part and overruled in part, filed October 27, 1933.

9. Defendants' answer in said cases, filed November 25, 1933.

[fol. 1626] 10. Opinion of Court, including separate concurring opinion of Honorable Arba S. Van Valkenburgh, filed on the 29th day of October, 1934.

11. Decree dismissing bill of complaint in each of said cases, filed December 20, 1934.

12. Petition of petitioners, plaintiffs and appellants for rehearing, filed on the 20th day of December, 1934.

13. Order allowing petitioners, plaintiffs and appellants leave to file petition for rehearing and staying all proceedings in said cases pending further order of the Court, filed January 2 1935.

14. Order directed to said defendants to show cause why plaintiffs' petitions for rehearing should not be allowed, filed January 2, 1935.

15. Stipulation and order for the consolidation of said cases Nos. 2328-2378, inclusive, for the purpose of trial, presentation and further proceedings, filed June 15, 1935.

16. Memorandum opinion refusing to allow plaintiffs' petitions for rehearing filed June 20, 1935.

17. Joint and final decree of the Court dismissing the bills of complaint in these cases as consolidated and dismissing the plaintiffs' petitions for rehearing, filed June 20, 1935.

18. Statement of petitioners, plaintiffs and appellants pursuant to the provisions of Rule XII. of the Supreme Court of the United States showing the jurisdiction of that Court to review the decree of the Court in these cases, filed [fol. 1627] June 29, 1935.

19. Proof of service on appellees of said statement of jurisdiction pursuant to the provisions of Rule XII dated July 2, 1935.

20. Petition of petitioners, plaintiffs and appellants for appeal and assignment of errors, filed June 29, 1935.

21. Order of Court allowing appeal, filed June 29, 1935.

22. Order granting application for supersedeas, filed June 29, 1935.

23. Appeal bond of petitioners, plaintiffs and appellants, filed and approved June 29, 1935.

24. Order enlarging time to August 29, 1935, within which to settle record, filed July 30, 1935.

25. Order extending to August 29, 1935, the time within which to file the record in the Supreme Court, filed August 1, 1935.

26. Order extending to September 28, 1935, the time within which to file record on appeal, filed August 26, 1935.

27. Order extending to October 28, 1935, time within which to file record on appeal, filed September 28, 1935.

28. Order extending to November 25, 1935, time within which to file record on appeal, filed October 26, 1935.

29. Order extending to December 9, 1935, time within which to file record on appeal filed November 23, 1935.

30. Order extending to December 25, 1935, time within [fol. 1628] which to file record on appeal filed December 9, 1935.

31. Order extending to January 6th, 1936, time within which to file record on appeal filed December 23, 1935.

32. Narrative Statement of evidence including Stipulation of parties agreeing to such Narrative Statement.

33. Stipulation relative to transmitting certain papers and documents as original exhibits.

34. Order of Court approving the Narrative Statement and the Stipulation relative to transmitting original exhibits.

35. Notice of Lodgment, Præcipe, and Stipulation.

Frederick H. Wood, John B. Gage, Attorneys for Petitioners, Plaintiffs and Appellants.

The above-named defendants hereby waive service of the above and foregoing notice of lodgment and præcipe and do hereby consent that the record for appeal in these cases as consolidated shall contain the narrative transcript, exhibits, pleadings, papers and documents as set forth in the

above and foregoing præcipe without objection or amendment thereto in any particular on the part of said defendants.

Wendell Berge, Attorney for Respondents, Defendants and Appellees.

[File endorsement omitted.]

[fol. 1629] Clerk's certificate to foregoing transcript omitted in printing.

[fols. 1630 & 1631] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION AS TO PRINTING RECORD—Filed Jan. 9, 1936

Come now the appellants in the above-entitled cause and adopt their Assignments of Error as their Statement of Points to be Relied Upon, and represent that the whole of the record as filed should be printed by the Clerk for the hearing of the case, save and except Exhibit (b) annexed to the petition entitled "Petition for Reinvestigation and Rehearing" in the said record, which exhibit need not be printed.

Frederick H. Wood, John B. Gage, Counsel for Appellants.

Receipt of service of the copy of within Statement and Designation is hereby acknowledged this 9th day of January, 1936.

Wendell Berge, Attorney for Appellees.

[fol. 1632] [File endorsement omitted.]

Endorsed on cover: File No. 40,240. W. Missouri, D. C. U. S. Term No. 686. Fred O. Morgan, doing business as Fred O. Morgan Sheep Commission Company, et al., appellants, vs. The United States of America and the Secretary of Agriculture. Filed January 6, 1936. Term No. 686, O. T., 1935.

CLERK'S COPY

TRANSCRIPT OF RECORD

ORIGINAL EXHIBITS

Supreme Court of the United States

OCTOBER TERM, 1935

No. 686

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

FILED JANUARY 6, 1936.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 686

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL., APPELLANTS,

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APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 21, 1936.

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Petitioners' original exhibits—Continued. Page

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No. 9—Memorandum comparing Secretary's required performance in selling and buying with actual performance—1931 11

No. 10—Statement showing business getting and maintenance costs—1931 12

No. 11—Charts showing trend of beneficial effects of agencies' country auxiliary selling service on customers' sales proceeds from yearlings, etc.—1931 13

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COMPARING THE REVENUE YIELD OF RATES PRESCRIBED IN ORDER OF JUNE 14, 1933, AND THOSE SET FORTH IN PRECEDING TARIFFS AS DEDUCTED BY APPLYING THE RESPECTIVE RATES TO TRANSACTIONS ACTUALLY HANDLED THROUGHOUT THE YEAR 1931 BY 57 AGENCIES

Agency No.	CATTLE AND CALVES: No. of Head Embraced in Test	GROSS REVENUE YIELD OF: Tariff No. 2,	Tariff No. 3,	Order 6/14/33	REDUCTION EFFECTED BY ORDER OF 6/14/1933: Tariff No. 2.	Percent.	Tariff No. 3.	Percent.	HOGS: No. of Head Embraced in Test	GROSS REVENUE YIELD OF: Tariff No. 2,	Tariff No.
1	-	-	-	-					-	-	
4	32 979	$ 19 188 88	$ 18 211 10	$ 15 388 80	$ 3 799 78	19.80 %	$ 2 822 20	15.50%	8 654	$ 1 639 66	$ 1 458
5	-	-	-	-					-	-	
6	10 177	6 596 39	6 085 26	5 269 01	1 327 38	20.12	786 25	12.38	7 749	3 128 39	1 78
7	16 377	8 494 05	8 434 80	7 480 75	1 013 30	11.93	953 45	11.30	36 628	10 [illegible] 56	8 700
9	2 190	1 474 39	1 354 95	1 179 80	294 59	19.98	187 15	11.78	12 057	3 039 87	2 678
12	58 757	34 133 79	32 121 80	26 405 15	7 728 64	22.64	5 716 65	17.78	27 615	6 847 07	5 703
13	56 697	32 522 63	31 009 90	26 663 20	5 859 43	18.02	4 346 60	14.02	40 719	10 669 34	8 743
14	38 329	21 813 90	20 821 25	16 611 65	5 208 25	23.87	3 909 60	19.05	27 792	6 260 24	5 309
15	12 624	7 513 15	7 196 05	6 216 60	1 296 55	17.26	968 45	13.48	20 206	5 588 90	4 715
16	34 456	14 916 29	13 867 80	11 854 80	3 060 49	20.52	2 013 00	14.52	7 826	2 196 14	1 837
17	9 998	5 686 78	5 511 40	4 818 85	867 38	15.26	692 55	12.57	6 149	1 649 94	1 383
18	47 215	29 712 19	27 877 25	24 200 70	5 511 49	18.56	3 676 55	13.19	10 810	2 511 70	2 165
19	9 927	5 699 45	5 552 45	4 819 00	1 080 45	18.31	833 45	14.74	3 229	818 30	670
20	27 788	16 671 23	15 492 85	13 155 80	3 515 83	21.09	2 337 25	15.09	3 511	845 75	749
23	24 92	[illegible] 340 34	15 011 40	13 335 60	3 005 34	17.53	1 675 80	11.16	1 811	510 75	424
25	42 309	25 601 29	25 117 90	21 837 05	4 764 24	17.91	3 280 85	13.06	15 307	4 190 16	3 546
26	28 [illegible]	15 517 02	15 098 35	12 838 25	2 678 77	17.26	2 260 10	14.97	20 091	5 033 68	4 316
29	24 914	14 481 60	13 971 35	12 089 90	2 391 70	16.52	1 881 45	13.47	12 426	3 008 78	2 550
30	22 527	13 330 01	12 735 45	10 890 65	3 039 36	21.82	1 844 80	14.49	3 318	1 018 66	784
33	1 306	774 70	738 95	621 80	153 20	19.78	117 45	15.89	1 790	474 90	408
34	27 151	16 783 12	15 687 30	13 850 70	2 932 42	17.47	1 836 60	11.71	10 996	2 757 34	2 241
36	56 606	32 700 79	30 598 55	25 994 60	7 706 19	22.87	4 603 95	15.04	11 591	3 149 18	2 674
39	2 121	1 101 50	1 082 95	956 65	144 85	13.15	126 30	11.66	25	10 58	8
40	58 667	33 042 08	31 353 70	25 686 85	7 355 23	22.27	5 666 85	18.07	10 738	2 839 98	2 382
43	-	-	-	-	-		-		-	-	
44	6	3 30	3 85	3 85	55	16 67	-	-	5	1 45	1
46	99 151	60 255 76	55 912 05	48 441 39	11 814 37	19.61	7 470 65	13.36	33 425	8 340 33	6 95
48	23 224	23 599 43	21 749 70	18 786 55	4 812 88	20.39	2 963 15	13.62	5 712	1 428 80	1 24
51	19 992	10 417 49	10 469 10	9 277 50	1 139 99	10.94	1 191 60	11.38	126 624	36 388 32	30 07
52	18 387	10 888 11	10 312 10	8 923 45	1 964 66	18.04	1 388 65	13.47	6 309	1 656 08	1 41
53	37 110	18 839 88	16 878 00	15 031 50	3 808 08	20.21	1 843 50	10.92	26 881	4 719 55	3 62
54	118 497	71 096 79	64 556 95	53 997 50	17 099 29	24.05	10 561 45	16.36	27 [illegible]	5 799 30	4 68
55	33 493	22 155 06	20 134 35	17 531 15	4 623 91	20.87	2 603 20	12.33	8 [illegible]	1 440 69	1 22
56	28 721	18 466 85	15 175 65	13 438 85	5 028 00	27.23	2 [illegible]	16.92	[illegible]	1 889 53	1 57
59	138 747	82 456 67	75 395 00	64 889 75	17 566 92	21.30	12 505 25	13.93	[illegible]	15 787 42	12 95
60	14 740	9 163 42	9 005 10	7 748 00	1 415 42	15.45	1 257 10	13.96	19 [illegible]	5 592 28	4 72
61	10 493	5 085 56	4 910 75	4 414 40	671 16	13.20	496 35	10.11	[illegible] 181	1 956 75	1 70
62	28 277	17 130 78	16 214 05	13 859 45	3 271 33	18.51	2 354 60	14.52	[illegible]	4 284 76	3 63
63	97 518	54 024 12	49 755 85	42 130 55	11 893 57	22.02	7 625 30	15.33	[illegible] 140	25 314 21	22 06
65	36 782	21 807 47	20 261 80	17 578 75	4 228 72	19.39	2 682 85	13.24	7 [illegible] 304	[illegible] 855 65	1 49
66	1 671	1 069 75	972 60	849 50	221 25	20 68	124 10	12.76	[illegible] 85	237 75	20
67	35 [illegible]	222 10	223 55	195 50	26 60	11.98	27 05	12.55	5 [illegible]	[illegible] 734 98	1 45
[illegible]	[illegible] 52	20 [illegible] 83	18 742 40	15 259 75	3 788 93	19.80	2 482 65	13.26	13 17[illegible]	3 274 16	2 76
[illegible]	[illegible] 257	33 [illegible] 73	29 926 90	25 725 85	8 051 87	23.84	4 201 05	14.04	29 5[illegible]	4 878 10	4 07
72	[illegible] 830	1 [illegible] 80	1 028 90	916 85	300 95	24.71	171 95	15.79	1 046	252 60	22
[illegible]	75 [illegible]	43 784 58	40 [illegible] 20	33 592 60	10 191 98	23.28	6 699 60	16.63	18 [illegible]	4 308 00	3 75
74	6 709	4 400 01	[illegible] 094 25	3 553 25	846 76	19.24	541 00	13.21	2 591	672 25	57
75	20 183	12 287 93	[illegible] 338 05	9 629 00	2 658 93	21.64	1 709 05	15.07	5 145	1 359 38	1 17
76	7 725	4 806 09	[illegible] 547 30	4 093 10	712 99	14.84	554 20	11.93	2 [illegible]	2 [illegible] 66	1 73
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible] 218 98	1 84

6	10 177	5 866 38	5 866 38	5 269 01	1 327 38	20.12	786 26	12.98	7 749	3 128 39	1 766	
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63	97 518	54 024 12	49 766 85	42 130 55	11 893 57	22.02	7 [illegible] 30	15.33	140 [illegible]	25 314 21	22 064	
65	34 [illegible]	21 807 47	20 861 60	17 578 75	4 228 72	19.39	2 682 85	13.24	7 [illegible]	[illegible] 358 65	1 492	
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67	[illegible] 32	[illegible] 222 10	223 55	195 50	26 60	11.98	[illegible] 21 05	12.35	5 [illegible]	[illegible] 734 98	1 456	
[illegible]	[illegible] 78	20 [illegible] 63	18 742 40	16 269 75	3 788 93	14.30	2 482 65	13.26	13 17[illegible]	3 274 16	2 784	
[illegible]	[illegible] 257	[illegible] 73	29 936 90	25 725 85	8 051 87	23.94	4 201 05	14.04	29 [illegible]	4 878 10	4 075	
72	[illegible] 930	[illegible] 90	1 093 90	916 85	300 95	24.71	171 95	15.79	1 046	282 60	223	
[illegible]	[illegible] 037	43 784 58	40 [illegible] 20	33 592 60	10 131 98	23.28	6 699 60	16.63	18 [illegible]	4 308 00	3 750	
74	6 709	4 400 01	[illegible] 094 05	3 553 25	[illegible] 846 76	19.24	541 00	13.21	2 591	672 25	572	
75	[illegible] 183	12 287 93	11 [illegible] 05	9 629 00	2 658 93	21.64	1 709 05	15.07	5 145	1 359 38	1 173	
76	7 725	4 806 03	[illegible] 547 30	4 093 10	712 99	14.84	554 20	11.93	7 [illegible]	[illegible] 230 66	1 733	
77	21 397	12 299 87	11 542 15	9 888 65	[illegible] 411 22	19.63	1 653 50	14.33	9 [illegible]	[illegible] 219 95	1 847	
[illegible]	[illegible] 776	[illegible] 340 12	[illegible] 017 15	[illegible] 474 50	[illegible] 865 62	19.94	542 65	13.51	3 093	[illegible] 26 22	[illegible]	
[illegible]	[illegible] 599	5 [illegible] 84	[illegible] 428 00	4 716 20	1 158 60	19.72	711 80	13.11	[illegible] 992	750 20	[illegible] 034	
[illegible]	[illegible] 336	[illegible] 354 32	[illegible] 301 65	42 183 55	14 171 25	25.15	8 118 10	16.14	30 721	[illegible] 604 69	6 48[illegible]	
83	[illegible] 126	[illegible] 013 35	26 373 35	22 286 25	[illegible] 727 00	25.75	4 087 10	15.50	3 782	[illegible] 370 42	[illegible] 82	
84	[illegible] 225	35 [illegible] 1	[illegible] 435 [illegible]	27 931 75	8 055 38	22.38	4 476 90	13.91	8 876	[illegible] 256 98	1 936	
87	[illegible] 214	[illegible] 678 [illegible]	48 [illegible]	408 75	149 25	26.84	75 60	15.67	217	58 18	50	
TOTAL 57	1 766 747	$1 069 16[illegible]	[illegible] 988 285 [illegible]	843 020 35	$ 225 241 44	21.06¢	$ 144 365 15	14.61¢	887 799	$ 227 282 32	$ 190 212	
AVG PER HEAD	-	60.55¢	55.97¢	47.79¢	12.76¢	-	8.18¢	-		25.60¢	21.	

Ex 201 - 7/27/34

STATEMENT NO. 1
Sheet 1 of 2

NO. 511, SECRETARY'S ORDER OF JUNE 14, 1933.

JUNE 14, 1933, AND THOSE SET FORTH IN PRECEDING TARIFFS NOS. 2 AND 3, RESPECTIVELY.
ES ACTUALLY HANDLED THROUGHOUT THE YEAR 1931 BY 57 AGENCIES ACTIVE AT END OF 1931

			GROSS REVENUE YIELD OF			REDUCTION EFFECTED BY ORDER OF 6/14/1933			
OF 6/14/1933		No. of Head Embraced in Test	Tariff No. 2,	Tariff No. 3,	Order 6/14/33	Tariff No. 2,	Percent	Tariff No. 3,	Percent
No. 3.	Percent								
822 30	15.50%	8 684	$ 1 639 68	$ 1 456 80	$ 1 763 58	$ 276 08	16.84%	$ 95 22	6 53%
786 25	12.98	7 749	3 128 79	1 78[illegible]	1 712 20	416 59	19.57	44 95	2.56
963 48	11.30	36 625	16 [illegible]	8 700 90	8 728 65	1 598 31	15.48	27 76	0 32
157 15	11.78	12 057	3 089 87	2 678 10	2 629 32	410 55	13.61	48 78	1 82
718 65	17.78	27 615	6 847 07	5 703 15	5 594 14	1 252 93	18.30	111 01	1.95
346 60	14.02	40 719	10 869 34	8 [illegible] 41	8 528 38	2 140 96	20.07	215 07	2.46
909 60	19.05	27 793	5 260 24	5 309 70	5 280 88	979 36	15.64	28 82	0.54
968 45	13.48	20 206	5 [illegible] 80	4 715 60	4 682 43	876 47	15.77	33 17	0.70
013 00	14.52	7 826	2 196 14	1 837 90	1 836 04	361 10	16.44	2 86	0.15
692 55	12.57	6 149	1 649 94	1 383 95	1 397 65	252 31	15.29	13 [illegible]	0 99
676 55	13.39	10 810	2 611 70	2 165 05	2 037 49	474 21	18.88	127 56	5.89
833 45	14.74	3 229	818 30	679 [illegible]	682 81	165 79	20.26	17 74	2.65
337 25	15.09	3 811	845 75	745 [illegible]	719 65	126 10	14.91	29 42	3.93
575 80	11.16	1 811	510 75	424 [illegible]	419 68	91 07	17.73	4 87	1.15
280 85	13.06	15 307	4 190 16	3 546 70	3 511 13	679 03	16.21	35 57	1.00
260 10	14.97	20 091	5 [illegible] 88	4 316 45	4 293 17	740 88	14.71	23 28	0.54
881 48	13.47	12 426	3 [illegible] 78	2 [illegible] 80	2 520 96	[illegible] 83	16.21	29 54	1.16
844 80	14.49	3 318	1 018 68	784 70	780 40	[illegible] 26	23.39	4 30	0.55
117 45	15.89	1 790	474 90	408 10	396 00	78 90	16.61	12 10	2.96
836 60	11.71	10 996	2 787 54	2 241 95	2 108 78	648 58	23.52	133 20	5.94
603 95	15.04	11 591	3 148 18	2 674 95	2 648 28	506 90	16.10	32 67	1.22
126 30	11.66	[illegible] 25	10 58	8 65	8 65	1 70	16.11	-	-
666 85	18.07	10 738	2 [illegible] 88	2 383 18	2 329 98	509 96	17.96	53 19	2.23
-	-	-	-	-	-	-	-	-	-
		[illegible] 5	1 45	1 25	1 25	20	13.79	-	-
470 65	13.36	33 425	8 340 33	6 967 90	6 721 97	1 618 46	19.41	236 03	3.39
963 15	13.62	5 712	1 428 80	1 241 65	1 [illegible] 90	232 60	16.32	48 78	3.93
191 60	11.38	[illegible] 624	36 388 32	30 [illegible] 83	30 [illegible] 04	5 028 28	16.57	[illegible]	0.[illegible]
389 65	13.47	6 309	1 656 08	1 [illegible] 95	1 403 91	252 17	15.23	14 04	0.99
843 50	10.92	16 881	4 719 55	3 627 90	3 484 03	1 236 52	26.18	143 87	3.97
861 45	16.36	23 [illegible] 24	5 799 30	4 [illegible] 65	4 [illegible] 70	1 314 60	22.67	201 95	4.31
60[illegible] 20	12.33	6 [illegible] 42	1 440 89	1 [illegible] 60	1 172 33	268 26	22.88	54 27	4.42
[illegible] 80	16.92	[illegible]	1 [illegible] 53	[illegible] 40	1 [illegible] 63	367 30	19.43	56 77	3.89
505 25	13.95	[illegible]	15 757 42	12 950 20	12 [illegible] 36	3 184 08	20.21	376 88	2.91
257 10	13.96	19 [illegible]	5 [illegible] 26	4 727 60	4 724 76	867 52	15.51	[illegible] 84	0.06
496 35	10.11	[illegible] 491	1 950 75	1 [illegible] 10	1 690 21	266 54	13.62	13 89	0.82
354 60	14.52	[illegible]	4 [illegible] 76	3 631 80	3 [illegible] 60	632 16	14.75	20 80	0.57
625 30	15.33	117 [illegible]	25 314 21	22 084 65	20 686 20	4 656 01	18.39	1 396 48	6.33
682 85	13.24	[illegible] 7 304	[illegible] 353 65	1 492 75	1 [illegible] 56	471 29	25.83	116 29	7.80
124 10	12.76	[illegible] 965	237 75	[illegible] 70	208 38	32 37	13.62	1 88	0.[illegible]
29 05	12.55	5 [illegible]	[illegible] 734 98	1 456 55	1 [illegible] 15	279 80	16.13	1 40	0.10
482 65	13.26	13 17[illegible]	3 [illegible] 14	2 764 10	[illegible] 660 68	623 56	19.06	113 52	4.11
201 05	14.04	19 5[illegible]	4 [illegible] 10	4 [illegible] 30	3 860 00	1 018 10	20.87	215 30	5.26
171 95	15.79	1 046	252 60	223 05	214 13	38 47	15.23	8 92	4.00
699 60	16.63	18 [illegible]	4 308 00	3 750 15	3 322 24	985 76	22.88	427 91	11.41
541 00	13.21	[illegible] 581	[illegible] 672 25	572 60	559 93	112 32	16.71	12 67	2.21
709 85	15.07	5 145	1 [illegible] 38	1 [illegible] 10	[illegible] 130 39	228 99	16.85	[illegible] 89	[illegible]
		[illegible]	[illegible] 230 66	1 733 85	[illegible] 604 96	365 70	18.01	68 89	3.97

955 45	11.30	38 628	10 220 96	8 700 90	9 728 65	1 598 31	15.48	27 76	0 32
187 15	11.75	12 057	3 039 87	2 678 10	2 629 32	410 55	13.61	48 78	1 82
5 718 65	17.78	27 615	6 847 07	5 705 16	5 594 14	1 252 93	18.30	111 01	1.95
4 346 60	14.02	40 719	10 669 34	8 743 49	8 528 38	2 140 96	20.07	215 07	2.46
3 909 60	19.05	27 792	6 260 24	5 309 70	5 280 88	979 36	15.64	28 82	0.54
968 45	13.48	20 206	5 588 90	4 715 60	4 682 43	876 47	15.77	33 17	0.70
2 013 00	14.52	7 825	2 196 14	1 837 90	1 836 04	361 10	16.44	2 86	0.16
692 55	12.57	6 149	1 649 94	1 383 95	1 397 63	252 31	15.29	13 68	0.99
3 675 55	13.19	10 810	2 611 70	2 165 05	2 037 49	474 21	18.88	127 56	5.89
833 45	14.74	3 229	818 30	670 25	662 51	165 79	20.28	17 74	2.65
2 337 25	15.09	3 511	845 75	749 05	719 63	126 10	14.91	29 42	3.93
1 875 80	11.16	1 811	510 75	424 55	419 68	91 07	17.73	4 87	1.15
3 280 85	13.06	15 307	4 190 16	3 546 70	3 511 13	679 03	16.21	35 57	1.00
2 260 10	14.97	20 091	5 033 88	4 316 45	4 293 17	740 65	14.71	23 28	0.54
1 881 45	13.47	12 426	3 008 79	2 550 50	2 520 96	487 83	16.21	29 54	1.16
1 844 80	14.49	3 318	1 019 68	784 70	780 40	203 26	23.39	4 30	0.55
117 45	15.89	1 790	474 90	408 10	396 00	78 90	16.61	12 10	2.96
1 836 60	11.71	10 936	2 757 34	2 241 95	2 108 78	648 59	23.52	133 20	5.94
4 603 95	15.04	11 591	3 149 18	2 674 95	2 648 28	806 90	16.10	32 67	1.22
126 30	11.66	25	10 55	8 85	8 85	1 70	16.11	-	-
5 666 85	18.07	10 738	2 839 98	2 383 15	2 329 96	509 96	17.96	53 19	2.23
-	-	-	-	-	-	-	-	-	-
-	-	5	1 45	1 25	1 25	20	13.79	-	-
7 470 65	13.36	33 425	8 340 33	6 967 90	6 721 97	1 618 46	19.41	236 03	3.39
2 963 15	15.62	5 712	1 428 80	1 241 65	1 197 90	232 60	16.32	48 78	3.93
1 191 60	11.38	135 624	36 388 32	30 073 83	30 [illegible] 04	5 028 28	16.57	286 [illegible]	0.95
1 389 65	13.47	6 309	1 656 08	1 437 95	1 403 91	252 17	15.23	14 04	0.99
1 943 80	10.92	16 881	4 719 55	3 627 90	3 484 03	1 235 52	26.18	143 87	3.97
20 561 45	16.36	27 [illegible]	5 799 30	4 685 65	4 494 70	1 314 60	22.67	201 95	4.31
2 60[illegible] 20	12.33	6 [illegible]	1 440 59	1 226 50	1 172 33	268 28	22.98	54 27	4.42
2 [illegible] 60	15.92	[illegible]	1 889 93	1 579 40	1 532 63	367 30	19.43	56 77	3.59
10 505 85	13.93	69 [illegible]	15 757 43	12 950 20	12 573 35	3 184 08	20.21	376 85	2.91
1 257 10	13.95	19 [illegible]	5 599 28	4 727 60	4 724 76	867 52	15.51	2 84	0.06
496 35	10.11	191	1 956 75	1 704 10	1 690 21	266 84	13.62	13 89	0.82
2 354 60	14.52	[illegible]	4 284 76	3 631 80	3 652 60	632 16	14.75	20 80	0.57
7 525 30	15.33	149 [illegible]	25 314 21	22 064 65	20 656 20	4 656 01	18.39	1 396 45	6.33
2 682 65	13.24	7 [illegible]	[illegible] 65	1 492 75	1 376 86	479 29	25.83	116 39	7.80
124 10	12.76	[illegible]	237 75	208 70	205 38	32 37	13.62	1 65	0.82
21 05	12.55	5 [illegible]	[illegible] 98	1 456 55	1 455 15	279 80	16.13	1 40	0.10
2 482 65	13.25	13 17[illegible]	3 274 16	2 784 10	[illegible] 58	623 58	19.06	113 52	4.11
4 201 05	14.04	29 [illegible]	4 878 10	4 075 30	3 860 00	1 018 10	20.87	215 30	5.28
171 95	15.79	1 046	252 80	223 05	214 13	34 47	15.23	8 92	4.00
5 899 60	16.63	18 [illegible]	4 308 00	3 750 15	3 322 24	985 76	22.88	427 91	11.41
841 00	13.21	2 591	672 25	572 60	559 93	112 32	16.71	12 67	2.21
1 709 05	15.07	5 145	1 359 38	1 [illegible] 10	[illegible] 38	228 99	16.85	17 39	1.55
554 20	11.93	7 [illegible]	2 [illegible] 66	1 733 55	[illegible] 96	365 70	18.01	68 89	3.97
1 653 50	14.33	9 [illegible]	2 [illegible] 95	1 843 20	1 747 10	472 85	21.30	96 10	5.21
542 65	13.51	3 093	[illegible] 22	[illegible] 10	550 75	145 47	20.60	53 65	8.73
711 80	13.11	2 992	750 20	[illegible] 80	615 01	135 19	18.08	19 79	3.12
8 118 10	15.14	30 721	[illegible] 64	6 [illegible] 35	6 165 83	1 495 86	19.52	281 52	4.36
4 087 10	15.50	3 782	[illegible] 42	[illegible] 70	902 35	158 07	17.32	30 40	3.65
4 476 90	13.31	8 876	2 256 98	1 [illegible] 25	1 859 77	397 21	17.60	45 68	2.39
75 60	15.87	217	58 15	50 20	[illegible] 88	1 27	2.14	6 58	13.08
44 365 15	14.61%	887 799	$ 227 282 32	$ 190 211 83	$ 116 068 65	$ 41 217 87	18.13%	$ 4 746 98	2.49%
8.18%	-		25.60%	21.49%	30 96%	4.64%		0.53%	-

B. A. I. DOCKET NO. 311, SECRETARY'S ORDER OF JUNE 14, 1933

COMPARING THE REVENUE YIELD OF RATES PRESCRIBED IN ORDER OF JUNE 14, 1933, AND THOSE SET FORTH IN PRECEDING TARIFFS NOS. [illegible]
AS REFLECTED BY APPLYING THE RESPECTIVE RATES TO TRANSACTIONS ACTUALLY HANDLED THROUGHOUT THE YEAR 1931 BY 57 AGENCIES [illegible]

Agency No.	No. of Head Embraced in Test	S H E E P — GROSS REVENUE YIELD OF Tariff No. 2	Tariff No. 3	Order 6/14/33	REDUCTION EFFECTED BY ORDER OF 6/14/1933 Tariff No. 2	Percent	Tariff No. 3	Percent	T O T A L — GROSS REVENUE YI Tariff No. 2	Tariff No.
1	28 006	$ 2 393 75	$ 2 140 64	$ 1 849 70	$ 544 05	22.94%	$ 290 94	13.59%	$ 2 393 75	$ 2 140
4	1 131	119 95	111 03	94 22	25 73	21.45	16 81	15.14	20 948 16	19 780
5	210 823	17 819 07	16 224 22	13 968 80	3 852 27	21.62	2 255 42	13.9[illegible]	17 819 07	16 22[illegible]
6	1 174	296 59	260 45	229 10	66 49	22.49	33 35	13.04	9 020 77	8 07[illegible]
7	1 261	295 00	283 90	266 46	28 54	9.67	17 44	6.14	19 116 01	17 41[illegible]
9	597	152 75	140 20	131 85	20 90	13.68	8 35	5.96	4 667 01	4 15[illegible]
11	-	-	-	-	-	-	-	-	-	-
12	2 125	414 60	369 18	336 67	77 93	18 80	32 51	8.81	41 395 46	38 19[illegible]
13	5 871	1 155 10	1 024 15	927 66	227 44	19.69	96 49	9.42	44 347 07	40 77[illegible]
14	5 756	1 047 38	970 85	899 15	148 20	14.15	71 67	7.38	29 127 52	26 80[illegible]
15	3 948	686 49	638 73	583 32	103 17	15.03	55 41	8.68	13 758 54	12 53[illegible]
16	360	90 00	86 05	80 55	9 45	10.50	5 50	6.39	17 201 47	15 79[illegible]
17	439	109 75	100 30	89 25	20 50	18.68	11 05	11.02	7 446 42	6 99[illegible]
18	2 707	273 40	242 39	229 11	44 29	16.20	13 28	5.48	32 497 39	30 20[illegible]
19	741	146 90	138 37	124 33	22 57	15.36	14 04	10.15	6 864 65	6 46[illegible]
20	511	104 75	95 13	88 50	16 25	15.51	6 63	6.97	17 621 73	16 33[illegible]
23	870	131 75	120 85	109 67	22 08	16.76	11.18	9.25	16 813 44	15 55[illegible]
25	3 289	571 09	520 62	462 79	108 30	18.96	57 83	11.11	31 362 54	29 16[illegible]
26	3 392	442 70	400 22	365 52	77 18	17.43	34 70	8.67	30 993 54	19 81[illegible]
29	765	191 15	173 79	157 30	33 85	17.71	16 49	9.49	17 681 54	16 69[illegible]
30	533	133 20	127 75	119 20	14 00	10.51	8 55	6.69	15 081 87	13 64[illegible]
33	740	172 30	158 00	154 30	18 00	10.45	3 70	2.34	1 421 90	1 30[illegible]
34	220	54 65	50 95	46 65	8 00	14.64	4 30	8.44	19 595 11	17 98[illegible]
35	40 775	5 233 60	4 811 62	4 303 28	930 32	17.78	508 34	10.56	42 093 57	39 08[illegible]
37	391	76 10	70 40	66 70	9 40	12.35	3 70	5.26	1 188 15	1 16[illegible]
42	1 151	262 25	230 33	212 85	49 40	18.81	17 48	7.58	36 144 25	33 96[illegible]
43	116 313	15 186 87	13 674 62	12 340 29	2 846 58	18.74	1 334 33	11.[illegible]	15 186 87	13 87[illegible]
44	347 605	27 266 24	23 499 18	21 037 93	6 228 31	22.84	2 461 25	10.4[illegible]	27 270 99	23 50[illegible]
46	6 712	1 225 47	1 098 88	978 42	247 05	20.16	120 41	10.96	69 821 56	63 96[illegible]
48	400	82 55	80 27	75 15	7 40	8.96	5 12	6.38	25 107 49	23 07[illegible]
51	5 884	1 359 47	1 283 71	1 172 75	186 72	13.77	110 96	8.64	48 165 28	41 82[illegible]
52	4 167	708 05	675 79	623 36	84 69	11.96	52 43	7.76	13 252 24	12 40[illegible]
53	710	132 30	125 90	118 11	14 19	10.73	7 79	6.19	22 691 43	20 62[illegible]
54	559 690	46 379 22	41 399 54	35 881 66	10 497 66	22.63	5 517 88	13.32	123 275 31	110 64[illegible]
55	396	48 70	45 10	44 11	4 59	9.43	99	2.21	23 644 35	21 40[illegible]
56	4 915	464 70	418 66	357 23	107 47	23.13	61 43	14.74	20 821 48	18 17[illegible]
59	188 901	16 432 66	14 789 49	12 870 53	3 562 13	21.68	1 919 96	12.99	114 646 76	103 13[illegible]
60	737	188 85	172 75	164 65	34 20	18.11	18 10	10.48	14 944 58	13 90[illegible]
61	802	190 37	180 46	170 79	19 62	10.31	9 71	5.39	7 232 68	6 79[illegible]
62	3 044	689 14	659 64	609 02	80 12	11.63	50 62	7.67	22 104 68	20 50[illegible]
63	24 471	4 077 79	3 765 64	3 423 95	653 84	16.03	341 69	9.07	83 416 12	75 57[illegible]
65	1 183	213 33	198 34	175 31	38 02	17.83	23 03	11.61	23 876 45	21 95[illegible]
66	382	93 45	86 51	78 50	14 95	16.00	8 01	9.26	1 400 95	1 28[illegible]
67	500	123 40	117 35	108 05	15 35	12.44	9 30	7.93	2 080 45	1 79[illegible]
70	2 443	503 35	438 67	391 51	111 84	22.22	47 16	10.75	23 629 19	21 96[illegible]
71	1 429	305 65	277 50	251 15	54 50	17.83	26 35	9.50	39 961 47	34 27[illegible]
72	45	11 25	10 85	10 15	2 10	18.78	70	6.45	2 481 65	1 32[illegible]
73	3 819	397 70	372 05	336 25	61 45	15.49	35 80	9.62	48 490 28	44 41[illegible]
74	365	71 25	64 40	57 40	13 85	19.44	7 00	10.47	5 143 51	4 73[illegible]
75	2 494	328 17	302 87	273 06	55 11	16.79	29 81	9 84	13 975 48	12 75[illegible]
76	1 355	224 45	211 51	189 33	35 12	15.65	22 18	10.49	7 061 20	6 58[illegible]
77	1 288	226 35	209 43	193 47	32 88	14.53	15 96	7.62	14 746 17	13 59[illegible]
78	3 565	583 93	544 82	500 98	82 95	14.21	43 84	8 05	5 630 27	5 17[illegible]
[illegible]	2 201	334 16	275 04	248 70	85 46	25 57	26 34	9 58	6 959 16	5 [illegible]

1	38 006	$ 2 393 75	$ 2 140 64	$ 1 549 70	$ 544 05	22.94¢	$ 230 94	13.59¢	$ 2 393 75	$ 2 140
4	1 131	119 95	111 03	94 22	25 73	21.48	16 81	15.14	20 948 16	19 780
5	210 823	17 819 07	16 224 22	13 968 80	3 852 27	21.62	2 237 42	13.91	17 819 07	16 224
6	1 174	295 59	260 45	229 10	66 49	22.49	31 35	12.04	9 020 77	8 072
7	1 261	295 00	283 90	266 46	38 54	9.67	17 44	6.14	19 116 01	17 419
9	597	152 75	140 20	131 85	30 90	15.88	8 35	5.96	4 667 01	4 135
11	-	-	-	-	-	-	-	-	-	-
12	2 125	414 60	369 18	336 67	77 93	18 80	32 51	8.81	41 395 46	38 196
13	5 871	1 155 10	1 024 15	927 66	227 44	19.69	96 49	9 42	44 347 07	40 777
14	5 756	1 047 32	970 85	899 18	148 20	14.15	71 67	7.38	29 127 52	26 801
15	3 948	686 49	638 73	583 32	103 17	15.03	55 41	8.68	13 758 54	12 535
16	380	90 00	86 05	80 55	9 45	10.50	5 50	6.39	17 201 47	15 771
17	439	109 75	100 30	89 25	20 50	18.88	11 05	11 02	7 446 42	6 965
18	2 707	273 40	242 39	229 11	44 29	16.20	13 28	5.48	32 497 39	30 284
19	741	146 90	138 37	124 33	22 57	15.36	14 04	10.15	6 864 65	6 461
20	511	104 75	95 13	88 50	16 25	15.51	6 63	6.97	17 621 73	16 337
23	870	131 75	120 85	109 67	22 08	16.76	11 18	9 25	16 813 44	15 582
25	3 289	571 09	520 62	462 79	108 30	18.96	57 83	11.11	31 362 54	29 105
26	2 392	442 70	400 22	365 52	77 18	17.43	34 70	8.67	20 993 54	19 813
29	765	191 15	173 79	157 30	33 85	17.71	16 49	9.49	17 681 54	16 681
30	533	133 20	127 75	119 30	14 00	10.51	8 55	6 69	15 081 87	13 647
33	740	172 30	158 00	154 30	18 00	10.45	3 70	2.34	1 421 90	1 305
34	220	54 65	50 95	46 65	8 00	14.64	4 30	8 44	19 595 11	17 940
35	40 775	5 233 60	4 811 62	4 303 28	930 32	17.78	508 34	10.56	42 093 57	39 085
37	391	76 10	70 40	66 70	9 40	12.35	3 70	5.26	1 188 15	1 102
42	1 151	262 25	230 33	212 85	48 40	18.84	17 48	7 59	36 144 25	33 967
43	116 313	15 186 87	13 674 62	12 340 29	2 846 58	18.74	1 534 33	11.06	15 186 87	13 674
44	247 605	27 276 24	23 499 18	21 037 93	6 229 32	22.84	2 461 25	10.46	27 276 99	23 504
46	5 712	1 225 47	1 098 88	978 42	267 05	20.16	130 41	10 96	69 821 56	63 968
48	400	82 55	80 27	75 15	7 40	8.96	5 12	6 38	25 107 48	23 071
51	5 884	1 359 47	1 283 71	1 172 75	134 72	13.77	113 96	8 64	48 165 28	41 886
52	4 167	708 05	675 79	623 36	84 65	11.96	52 43	7 76	13 252 24	12 406
53	710	132 30	125 90	118 11	14 19	10 73	7 79	6 19	22 691 43	20 639
54	559 690	46 379 22	41 399 54	35 881 66	10 497 66	22.63	5 517 96	13 32	123 275 31	110 648
55	396	48 70	45 10	44 11	4 59	9.43	99	2 20	23 644 35	21 400
56	4 918	464 70	418 66	357 23	107 47	23.13	61 63	14.72	20 821 48	18 172
59	188 901	16 432 66	14 789 49	12 870 53	3 562 13	21.68	1 918 96	12 98	114 646 76	103 134
60	737	188 85	172 75	164 65	34 20	18.11	18 10	10 48	14 944 56	13 905
61	802	190 37	180 46	170 79	19 63	10.31	9 71	5 38	7 232 68	6 796
62	3 044	689 14	659 64	609 02	80 12	11.63	50 62	7 67	22 104 68	20 606
63	34 471	4 077 79	3 765 64	3 423 95	653 34	16.03	341 69	9.07	83 416 12	75 576
65	1 183	213 33	198 34	175 31	38 02	17.82	23 03	11.61	23 876 45	21 952
66	382	93 45	86 51	78 50	14 95	16.00	8 01	9.26	1 400 95	1 258
67	500	123 40	117 35	108 05	16 35	13.44	9 30	7.93	2 080 45	1 957
70	2 443	503 35	438 67	391 51	111 94	22.32	47 16	10.75	23 529 19	21 945
71	1 439	305 65	277 50	251 15	54 50	17.63	26 35	9 50	39 961 47	34 279
72	45	11 25	10 85	10 15	2 10	9.78	70	6 45	1 481 65	1 322
73	3 819	397 70	372 05	336 25	62 45	15.45	35 80	9 62	48 490 28	44 414
74	385	71 25	64 40	57 40	13 65	19 44	7 00	10.47	6 143 51	4 791
75	2 494	328 17	302 87	273 06	55 12	16 79	29 81	9 84	13 975 48	12 754
76	1 355	224 45	211 51	189 33	33 12	15 65	22 18	10.49	7 061 20	6 592
77	1 288	226 35	209 43	193 47	32 68	14.53	15 96	7.62	14 746 17	13 584
78	3 565	583 93	544 82	500 98	80 95	14.21	43 84	8 05	6 630 27	5 176
79	2 201	534 16	275 04	248 70	85 46	25 57	26 34	9 58	6 959 16	6 337
82	1 993	366 22	344 34	322 72	43 50	11 89	21 62	6 28	64 355 71	57 086
83	3 091	623 90	556 54	515 75	108 15	17 33	40 79	7 33	31 607 57	27 762
84	98 990	7 656 71	7 257 59	6 426 09	1 329 62	16.06	831 50	11 46	45 899 80	41 571
87	92 061	7 721 92	7 137 39	6 290 32	1 431 60	18.54	847 07	11.87	8 338 07	7 870
TOTAL 57	1 698 347	$166 589 84	$149 965 15	$132 121 51	$ 34 468 33	20 69¢	$ 17 843 64	11 90¢	$1 463 054 95	$1 329 065
AVG PER STRAT		9 81¢	8 83	7 78¢	2.03¢	-	1.05¢	-		

DOCKET NO. 511, SECRETARY'S ORDER OF JUNE 14, 1933

ORDER OF JUNE 14, 1933, AND THOSE SET FORTH IN PRECEDING TARIFFS NOS. 2 AND 3, RESPECTIVELY.
TRANSACTIONS ACTUALLY HANDLED THROUGHOUT THE YEAR 1931 BY 57 AGENCIES ACTIVE AT END OF 1931.

STATEMENT NO 1
Sheet 3 of 2

				TOTAL - ALL SPECIES							
ESTED BY ORDER OF 6/14/1933				GROSS REVENUE YIELD OF			REDUCTION EFFECTED BY ORDER OF 6/14/1933				
Percent	Tariff No. 3	Percent		Tariff No. 2	Tariff No. 3	Order 6/14/33	Tariff No. 2	Percent	Tariff No. 3	Percent	
22.94	$ 890 94	13.59		$ 2 393 75	$ 2 140 64	$ 1 849 70	$ 544 05	22.73	$ 290 94	13.59	
21.45	16 81	15.14		20 948 16	19 780 02	16 846 60	4 101 56	19.57	2 934 42	14.82	
21.62	2 257 42	13.91		17 819 07	16 224 22	13 966 80	3 852 27	21.62	2 257 42	13.91	
22.49	31 35	13.04		9 020 77	8 072 86	7 210 31	1 810 46	20.07	862 55	10.68	
9.67	17 44	6.14		19 116 01	17 419 00	16 475 86	2 640 15	13.81	943 14	5.41	
13.68	8 35	5.96		4 667 01	4 155 25	3 940 97	726 04	15.56	214 28	5.16	
	-			-	-	-	-		-		
18.80	32 54	8.81		41 395 46	38 196 13	32 335 96	9 059 50	21.89	5 860 17	15.34	
19.69	98 48	9.47		44 347 07	40 777 40	36 119 24	8 227 83	18.55	4 658 16	11.42	
14.15	71 67	7.38		29 127 62	26 801 80	22 791 71	6 335 81	21.74	4 010 09	14.96	
15.03	55 42	8.68		13 758 54	12 539 38	11 482 35	2 276 19	16.54	1 057 03	8.43	
10.50	5 50	6.39		17 301 47	15 791 75	13 770 39	3 431 04	19.95	2 021 36	12.80	
18.88	11 08	11.02		7 446 42	6 995 65	6 305 73	1 140 69	15.32	689 92	9.86	
16.20	13 28	5.48		32 497 39	30 284 69	26 467 30	6 029 99	18.56	3 817 39	12.61	
15.36	14 04	10.15		6 864 65	6 461 07	5 595 84	1 268 81	18.48	865 23	13.39	
15.51	6 63	6.97		17 621 73	16 337 03	13 963 73	3 658 00	20.76	2 373 30	14.53	
16.76	11 18	9.25		16 813 44	15 556 80	13 864 55	2 948 41	17.54	1 691 85	10.88	
18.96	57 83	12.11		31 362 54	29 185 22	25 810 97	5 551 57	17.70	3 374 25	11.56	
17.43	34 70	8.67		20 993 54	19 815 02	17 496 94	3 496 60	16.66	2 316 08	11.70	
17.71	16 49	9.49		17 681 54	16 695 64	14 768 16	2 913 38	16.48	1 927 48	11.54	
10.51	8 55	6.69		15 081 87	13 647 90	11 790 25	3 291 62	21.83	1 857 65	13.61	
10.45	3 70	2.36		1 421 90	1 305 05	1 171 80	250 10	17.59	133 25	10.21	
14.64	4 30	8.44		19 596 11	17 980 20	16 006 10	3 589 01	18.32	1 974 10	10.98	
17.78	508 34	10.56		42 093 57	39 085 12	32 940 16	9 143 41	21.73	5 144 96	13.51	
12.35	3 70	5.26		1 188 15	1 162 20	1 032 20	155 95	13.15	130 00	11.19	
18.84	17 48	7.59		36 144 25	33 967 18	28 229 66	7 914 59	21.90	5 737 52	16.89	
18.74	1 534 32	11.08		15 186 87	13 874 62	12 340 29	2 846 58	18.74	1 534 33	11.06	
23.84	2 461 25	10.47		27 270 99	23 504 28	21 043 03	6 227 96	22.84	2 461 25	10 47	
20.16	120 41	10.96		69 821 56	63 968 82	56 141 68	13 679 88	19.59	7 827 14	12 24	
8.96	5 12	6.38		25 107 48	23 071 62	20 054 60	5 052 88	20.13	3 017 02	13 09	
12.72	110 96	8.64		48 165 28	41 826 64	40 810 29	7 354 99	15.27	1 016 35	1 43	
11.96	13 43	7.78		13 252 24	12 405 84	10 950 72	2 301 52	17.37	1 455 12	11 73	
10.73	7 79	6.19		23 691 43	20 628 80	18 633 64	5 057 79	21.35	1 995 16	9 67	
22.63	5 617 98	13.33		123 275 31	110 645 14	94 363 76	28 911 55	23.45	16 281 38	14.72	
9.43	99	2.20		23 644 35	21 406 05	18 747 59	4 896 76	20.72	2 658 46	12.42	
33.13	61 63	14.71		20 821 48	18 173 91	15 318 71	5 502 77	26.43	2 855 20	15.71	
21.68	1 919 98	12.99		114 646 76	103 134 69	90 333 63	24 313 13	21.21	12 801 06	12.41	
18.11	18 10	10.48		14 944 55	13 905 45	12 627 41	2 317 14	15.50	1 278 04	9.19	
10.31	9 71	5.38		7 232 68	6 796 31	6 275 36	957 32	13.22	519 93	7.64	
11.63	50 63	7.67		22 104 68	20 505 49	18 121 07	3 983 61	18.02	2 384 42	11.63	
16.03	341 69	9.02		83 416 12	75 576 14	66 212 70	17 203 42	20.62	9 363 44	12.39	
17.83	23 03	11.61		23 876 45	21 952 69	19 130 42	4 746 03	19.88	2 822 27	12.86	
16.06	8 01	9.26		1 400 96	1 262 81	1 132 38	268 57	19.17	130 43	10 33	
18.44	9 30	7.93		2 080 45	1 797 45	1 758 70	321 75	15.47	38 75	2.16	
22.22	47 16	10.75		23 629 19	21 945 17	19 301 84	4 524 35	18 99	2 643 33	12 05	
17.83	25 35	9 50		39 961 47	34 279 70	29 837 00	9 124 47	23.43	4 442 70	12 96	
9.78	70	6 45		1 481 65	1 322 70	1 141 13	340 52	22 97	181 57	13 73	
15.45	35 80	9.62		48 490 28	44 414 40	37 251 09	11 239 19	23.18	7 163 31	16.13	
19.44	7 00	10.47		6 143 51	4 731 25	4 170 58	972 93	18 92	560 67	11 85	
16.79	29 81	9 84		13 975 48	12 754 02	11 032 45	2 943 03	21.06	1 721 57	13.50	
15 65	22.18	10.49		7 061 20	6 592 66	5 947 39	1 113 81	15 77	645 27	5 79	
14.53	15 96	7.62		14 746 17	13 594.78	11 829 22	2 916 95	19 80	1 765 56	13 01	
8.21	43 84	8.05		6 630 27	5 176 37	4 536 23	1 094 04	19 43	640 14	12 37	
				[illegible]	[illegible]	5 579 91	1 379 25	19 82	797 93	12 86	

$	$ 390 94	13.59%		$ 2 393 75	$ 2 140 64	$ 1 849 70	$ 544 05	23.73%	$ 290 94	13.59%	
	16 81	15.14		20 948 16	19 780 03	16 846 60	4 101 56	19.57	2 934 35	14.88	
	2 257 42	13.91		17 819 07	16 224 22	13 966 80	3 852 27	21 62	2 257 42	13 91	
	31 35	12.04		9 020 77	8 072 86	7 210 31	1 810 48	20 07	862 85	10.68	
	17 44	6.16		19 116 01	17 419 00	16 475 86	2 640 15	13 81	343 14	5.41	
	8 35	5.96		4 667 01	4 155 25	3 940 99	726 04	15.66	314 28	5.16	
	-	-		-	-	-	-	-	-	-	
	32 84	8.81		41 395 46	38 196 18	32 385 96	9 059 50	21 89	3 860 17	15.36	
	96 49	9.47		44 347 07	40 777 40	36 119 24	8 227 83	18.55	4 658 16	11.42	
	71 67	7.38		29 127 52	26 801 80	22 791 71	6 335 81	21.78	4 010 09	14.96	
	55 41	8.68		13 758 54	12 539 38	11 482 38	2 276 19	16.54	1 057 03	8.43	
	5 50	6.39		17 201 47	15 791 75	13 770 39	3 431 04	19.95	2 021 36	12 80	
	11 08	11 02		7 446 42	6 995 65	6 305 73	1 140 69	15.32	689 92	9.86	
	13 28	5.48		32 497 29	30 284 69	26 467 30	5 029 99	18 56	3 817 39	12.61	
	14 04	10.15		6 864 65	6 461 07	5 595 84	1 268 81	18.48	865 23	13.39	
	6 63	6.37		17 621 73	16 337 03	13 963 73	3 658 00	20.76	2 373 30	14 53	
	11 16	9 25		16 813 44	15 556 80	13 864 55	2 948 49	17.54	1 691 85	10.88	
	32 83	11.11		31 362 54	29 185 22	25 810 97	5 551 57	17.70	3 374 25	11.56	
	34 70	8.67		20 993 54	19 815 02	17 496 94	3 496 60	16.66	2 318 08	11.70	
	16 49	9.49		17 681 54	16 695 64	14 768 16	2 913 38	16.48	1 927 48	11.54	
	8 55	6 69		15 081 87	13 647 90	11 790 25	3 291 62	21.83	1 857 65	13.61	
	3 70	2.34		1 421 90	1 305 05	1 171 80	250 10	17.59	133 25	10.21	
	4 30	8 44		19 596 11	17 980 20	16 006 10	3 589 01	18.32	1 974 10	10 98	
	508 34	10.56		42 093 57	38 085 12	32 940 16	9 143 41	21.73	5 144 96	13.51	
	8 70	5.26		1 188 15	1 162 20	1 032 20	155 98	13.13	130 00	11.19	
	17 48	7 59		36 144 25	33 967 18	28 229 66	7 914 59	21.90	5 737 52	16.89	
	1 534 33	11.06		15 186 87	13 874 62	12 340 29	2 846 58	18 74	1 534 33	11.06	
	2 461 25	10.47		27 270 99	23 504 28	21 043 03	6 227 96	22 84	2 461 25	10 47	
	120 48	10 96		69 821 56	63 968 82	56 141 68	13 679 88	19 56	7 827 14	12 24	
	8 12	6 38		25 107 48	23 071 62	20 054 60	5 052 88	20 13	3 017 02	13 09	
	110 96	8 64		48 165 28	41 826 64	40 810 29	7 354 99	15 27	1 016 35	2 43	
	82 43	7 76		13 252 24	12 405 84	10 950 72	2 301 52	17 37	1 455 12	11 73	
	7 79	6 19		22 691 43	20 628 80	18 633 64	5 057 79	21.35	1 995 16	9.67	
	5 617 96	13 33		123 275 31	110 645 14	94 363 76	28 911 55	23.45	16 281 38	14.71	
	99	2.20		23 644 35	21 406 05	18 747 59	4 896 76	20 72	2 658 46	12.42	
	61 63	14.71		20 821 48	18 173 91	15 318 71	5 502 77	26.43	2 855 20	15.71	
	1 918 96	12 98		114 646 76	103 134 69	90 333 63	24 313 13	21 21	12 801 06	12.41	
	18 10	10 48		14 944 55	13 905 45	12 627 41	2 317 14	15 50	1 378 04	9.19	
	9 71	5 35		7 232 68	6 796 31	6 275 36	957 32	13 22	519.95	7.64	
	50 63	7 67		22 104 68	20 505 49	18 121 07	2 953 61	18 02	2 384 42	11.63	
	341 69	9.07		83 416 12	75 576 14	66 212 70	17 203 42	20 62	9 363 44	12.39	
	23 03	11.61		23 876 45	21 952 69	19 130 42	4 746 03	19.86	2 822 27	12 86	
	8 01	9.26		1 400 95	1 262 81	1 132 38	268 57	19 17	130 43	10 33	
	9 30	7.93		2 080 45	1 797 45	1 758 70	321 75	15.47	38 75	2.16	
	47 16	10.75		23 629 19	21 945 17	19 301 84	4 524 35	18 99	2 643 33	12 05	
	26 35	9 50		39 961 47	34 279 70	29 837 00	8 124 47	23.42	4 442 70	12 96	
	70	6 45		1 481 65	1 322 70	1 141 13	340 52	22 97	181 57	13 72	
	35 80	9 62		48 490 28	44 414 40	37 251 09	11 239 19	23.18	7 163 31	16.13	
	7 00	10.47		5 143 51	4 731 25	4 170 58	972 93	18 92	560 67	11 85	
	29 81	9 84		13 975 48	12 754 02	11 032 45	2 943 03	21.06	1 721 57	13.50	
	22 18	10.49		7 051 20	6 592 66	5 947 39	1 113 81	15 77	645 27	9 79	
	15 96	7.69		14 746 17	13 594 78	11 829 22	2 916 95	19 80	1 765 56	13 01	
	43 84	8 05		6 630 27	5 176 37	4 536 23	1 094 04	19 43	640 14	12 37	
	26 34	9 58		6 959 16	6 332 84	5 579 91	1 379 25	19 82	757 [illegible]	11 96	
	21 62	6 28		64 355 71	57 096 34	48 676 10	15 710 61	24.40	8 421 [illegible]	14 75	
	40 79	7 33		31 607 51	27 762 64	22 604 35	8 003 22	26 32	4 158 [illegible]	14 98	
	831 50	11 46		45 899 80	41 571 49	36 217 61	9 682 19	21 09	5 353 88	12.88	
	847 07	11.87		8 338 07	7 870 04	6 753.95	1 582.12	18 98	916 09	11 94	
65%	$ 17 843 64	11 90%		$1 469 054 96	$1 329 065 28	$1 162 107 51	$300 927 44	20 57%	$166 955 77	12.56%	
-	2.05¢	-		-	-	-	-	-	-	-	

ANALYSIS OF SELLING COMMISSION REVENUE
DERIVED FROM APPLICATION OF SECRETARY'S ORDER (JUNE 14, 1933) SCHEDULE OF RATES
TO 1951 VOLUME OF PETITIONER AGENCIES
(KANSAS CITY MARKET)

Firm No	REVENUE FROM HEAD CHARGES				REVENUE FROM EXTRA CHARGES				HEAD
	Calves	Yearlings	Cattle	Total Head Revenue	Drafts	A/C Sales	Checks	Total Extra Charge Revenue	AVERAGE REVENUE
a	b	c	d	e	f	g	h	i	
1	--	-	--	--	-	-	-	-	
4	$ 674 05	$ 5 170 40	$ 8 115 30	$ 13 989 75	$ 496 05	$ 12 55	$ 13 95	$ 522 55	$ 14
6	498 50	1 485 45	3 002 20	4 984 15	226 71	4 35	24 00	254 06	5
7	1 085 90	2 106 90	3 272 00	6 466 80	138 00	1 80	99 85	239 65	6
8	105 80	295 00	745 70	1 150 80	8 10	0 40	11 90	20 40	1
12	1 833 60	8 897 70	13 907 60	24 638 90	788 10	33 65	106 10	926 85	25
13	2 452 40	7 689 25	13 876 90	24 017 55	991 05	22 25	85 80	1 099 10	25
14	1 350 65	5 531 95	8 768 90	15 651 80	589 00	32 60	104 75	726 35	16
15	792 00	2 204 60	2 736 50	5 733 10	226 95	4 40	60 95	292 30	6
16	996 45	3 652 50	6 618 10	11 267 05	356 55	16 45	77 55	450 55	11
17	499 85	1 329 95	2 355 50	4 185 30	125 70	5 85	40 00	171 55	4
18	845 20	6 867 80	14 495 20	22 208 20	909 00	20 95	40 65	970 60	23
19	272 75	1 567 00	2 634 70	4 474 45	159 30	4 60	16 65	180 55	4
20	895 90	3 788 50	7 740 40	12 424 80	424 80	13 75	26 60	465 15	12
23	1 033 45	2 795 90	9 138 20	12 967 55	297 35	5 65	75 05	368 05	13
25	908 05	5 417 30	14 554 00	20 879 35	574 20	21 55	36 80	632 55	21
26	966 55	4 500 45	5 252 30	10 719 30	486 15	12 90	66 10	844 15	11
29	763 80	3 840 75	5 956 40	10 560 95	830 75	24 05	42 55	897 35	11
30	422 10	2 599 90	7 422 10	10 444 10	214 80	4 40	27 50	246 70	10
33	74 70	252 30	268 30	595 30	24 45	0 80	0 95	26 20	
34	545 00	2 633 15	9 461 90	12 640 05	299 85	8 55	10 75	319 15	12
35	962 85	6 428 35	15 979 30	23 370 50	544 70	23 15	64 40	632 25	24
37	69 90	305 55	311 40	686 85	51 60	0 80	0 90	53 30	
42	2 106 00	10 719 20	10 849 80	23 675 00	1 191 15	29 45	99 20	1 319 80	24
43	-	--	--	-	--	--	-	-	
44	1 20	0 80	1 60	3 60	--	--	0 25	0 25	
46	2 281 65	11 178 55	29 993 80	43 454 00	1 278 89	41 10	150 20	1 470 19	44
48	1 031 40	5 848 45	10 804 60	17 684 45	863 10	10 30	42 35	915 75	18
51	3 254 55	2 857 20	2 769 50	8 881 25	122 55	4 40	269 30	396 25	
52	537 55	2 828 55	4 313 00	7 679 20	301 05	13 60	47 55	362 20	
53	503 90	3 406 15	10 343 60	14 255 55	465 50	28 30	49 75	543 55	14
54	2 361 40	15 032 40	34 375 60	51 769 40	985 65	37 40	82 20	1 105 25	52
56	651 30	4 361 20	11 825 20	16 837 70	507 95	31 75	27 70	567 40	17
58	335 00	4 127 00	8 738 10	13 200 10	204 00	8 85	9 80	222 65	13
59	3 428 40	14 461 40	41 325 50	59 215 30	1 057 05	22 10	160 00	1 239 15	60
60	517 55	2 636 55	4 312 60	7 466 70	211 15	2 95	61 40	275 50	
61	1 396 55	875 70	1 546 10	3 818 35	82 05	0 80	19 80	102 65	
62	1 233 05	5 000 40	6 572 60	12 806 05	448 05	16 60	108 85	573 50	13
63	2 300 20	13 135 55	24 673 70	40 109 45	869 45	20 25	157 70	1 047 40	41
65	1 244 60	4 982 40	9 344 00	15 571 00	667 80	0 40	48 60	716 80	15
66	95 30	250 15	477 90	823 35	22 80	0 70	0 95	24 45	
67	39 25	79 85	70 40	189 50	3 00	0 15	2 85	6 00	
70	1 079 80	5 461 45	7 925 90	14 467 15	863 50	12 80	58 95	935 35	15
71	1 246 70	5 979 35	16 379 80	23 606 85	442 35	17 10	46 85	506 30	24
72	74 00	361 05	428 10	863 15	32 25	0 90	3 75	36 90	
73	1 650 90	10 149 30	18 726 00	30 526 20	853 05	28 55	35 50	917 10	31
74	146 35	1 097 35	2 106 90	3 350 60	105 30	4 40	12 90	122 60	
75	647 45	2 818 55	5 737 90	9 203 90	151 95	7 85	14 20	174 00	
76	506 30	1 196 25	2 233 40	3 935 95	86 25	3 40	50 55	140 20	
77	635 35	2 376 10	5 636 00	8 647 45	281 55	9 40	26 75	317 70	
78	152 45	1 082 30	2 017 80	3 254 55	101 10	0 75	10 45	112 30	

7	1 085 90	2 108 90	3 272 00	6 466 80	138 00	1 80	99 85	239 65	6
8	105 80	299 00	745 70	1 150 80	8 10	0 40	11 90	20 40	1
12	1 833 60	8 897 70	13 907 60	24 638 90	788 10	33 65	105 10	926 85	25
13	2 452 40	7 689 25	13 876 90	24 017 55	991 05	22 25	85 80	1 099 10	28
14	1 350 65	5 531 95	8 768 90	15 651 80	589 00	32 60	104 75	726 35	16
15	792 00	2 204 60	2 736 50	5 733 10	226 95	4 40	60 95	292 30	6
16	996 45	3 652 50	6 618 10	11 267 05	356 55	16 45	77 55	450 55	11
17	499 85	1 329 95	2 356 50	4 186 30	125 70	5 85	40 00	171 55	4
18	845 20	6 867 80	14 496 20	22 208 20	909 00	20 95	40 65	970 60	23
19	272 75	1 567 00	2 634 70	4 474 45	159 30	4 60	16 65	180 55	4
20	895 90	3 788 50	7 740 40	12 424 80	424 80	13 75	26 60	465 15	12
23	1 033 45	2 795 90	9 138 20	12 967 55	387 35	5 65	75 05	368 05	13
25	908 05	5 417 30	14 554 00	20 879 35	574 20	21 55	36 80	632 55	21
26	966 55	4 500 45	5 252 30	10 719 30	465 15	12 90	66 10	544 15	11
29	763 80	3 840 75	5 956 40	10 560 95	530 75	24 05	42 55	597 35	11
30	422 10	2 599 90	7 422 10	10 444 10	214 80	4 40	27 50	246 70	10
33	74 70	252 30	268 30	595 30	24 45	0 80	0 95	26 20	
34	545 00	2 633 15	9 461 90	12 640 05	299 85	8 55	10 75	319 15	12
35	962 85	6 428 35	15 979 30	23 370 50	544 70	23 15	64 40	632 25	24
37	69 90	305 55	311 40	686 85	51 60	0 80	0 90	53 30	
42	2 106 00	10 719 20	10 849 80	23 675 00	1 191 15	29 45	99 20	1 319 80	24
43									
44	1 20	0 80	1 60	3 60			0 25	0 25	
46	2 281 65	11 178 55	29 993 80	43 454 00	1 278 89	41 10	150 20	1 470 19	44
48	1 031 40	5 848 45	10 804 60	17 684 45	863 10	10 30	42 35	915 75	18
51	3 254 55	3 857 20	2 769 50	8 881 25	122 55	4 40	269 30	396 25	9
52	537 55	2 828 65	4 313 00	7 679 20	301 05	13 60	47 55	362 20	8
53	503 80	3 406 15	10 343 60	14 255 55	465 50	28 30	49 75	543 55	14
54	2 361 40	15 032 40	34 375 60	51 769 40	985 65	37 40	82 20	1 105 25	52
56	651 30	4 361 20	11 825 20	16 837 70	507 95	31 75	27 70	567 40	17
58	335 00	4 127 00	8 738 10	13 200 10	204 00	8 85	9 80	222 65	13
59	3 428 40	14 461 40	41 325 50	59 215 30	1 057 05	22 10	160 00	1 239 15	60
60	517 55	2 636 55	4 312 60	7 466 70	211 15	2 95	61 40	275 50	7
61	1 396 55	875 70	1 546 10	3 818 35	82 05	0 80	19 80	102 65	3
62	1 233 05	5 000 40	6 572 60	12 806 05	448 05	16 60	108 85	573 50	13
63	2 300 20	13 135 55	24 673 70	40 109 45	869 45	20 25	157 70	1 047 40	41
65	1 244 60	4 982 40	9 344 00	15 571 00	667 80	0 40	48 60	716 80	16
66	95 30	250 15	477 90	823 35	22 80	0 70	0 95	24 45	
67	39 25	79 85	70 40	189 50	3 00	0 15	2 85	6 00	
70	1 079 80	5 451 45	7 925 90	14 457 15	863 60	12 80	58 95	935 35	15
71	1 246 70	5 979 35	16 379 80	23 605 85	442 35	17 10	45 85	505 30	24
72	74 00	361 05	428 10	863 15	32 25	0 90	3 75	36 90	
73	1 650 90	10 149 30	18 726 00	30 526 20	853 05	28 55	35 50	917 10	31
74	146 35	1 097 35	2 106 90	3 350 60	105 30	4 40	12 90	122 60	3
75	647 45	2 818 55	5 737 90	9 203 90	151 95	7 85	14 20	174 00	9
76	506 30	1 196 25	2 233 40	3 935 95	86 25	3 40	50 55	140 20	4
77	635 35	2 376 10	5 636 00	8 647 45	281 55	9 40	26 75	317 70	8
78	194 75	1 082 20	2 017 90	3 294 85	101 10	0 75	10 45	112 30	3
79	443 70	1 531 60	2 151 00	4 126 30	321 60	7 10	23 90	352 60	4
82	2 738 45	13 780 80	21 360 80	37 880 05	1 231 80	50 75	100 85	1 383 40	39
83	956 95	6 902 80	13 014 50	20 874 25	737 70	30 90	42 25	810 85	21
84	1 179 85	5 024 00	20 821 50	27 025 35	298 80	13 05	86 05	397 90	27
87	95 15	103 15	203 80	392 10	7 95	0 40	6 30	14 65	
TOTALS	$52 951 90	$239 004 20	$487 593 00	$779 649 10	$23 327 60	$731 90	$2 889 45	$26 948 95	$806
COMPARABLE REVENUE UNDER TARIFF #	65 538 95	337 439 80	521 035 60	924 014 25	23 327 60	731 90	2 889 45	26 948 95	950
REDUCTION EFFECTED BY SECRETARY S ORDER	$12 587 05	$98 435 60	$ 33 342 50	$144 365 15	[illegible]	Non-	None	None	$144
% OF REDUCTION	19.21%	29.17%	6.40%	15.62%					1

ANALYSIS OF SELLING COMMISSION REVENUE
FROM APPLICATION OF SECRETARY'S ORDER (JUNE 14, 1933) SCHEDULE OF RATES
TO 1931 VOLUME OF PETITIONER AGENCIES
(KANSAS CITY MARKET)

PETITIONERS' EXHIBIT NO. 4
WITNESS. Roberts, J. W.

HEAD CHARGES		REVENUE FROM EXTRA CHARGES				HEAD CHARGE AND EXTRA CHARGE REVENUE TOGETHER	REVENUE FROM SECONDS (Unchanged since same rates apply)	TOTAL REVENUE ALL CATTLE
Cattle	Total Head Revenue	Drafts	A/C Sales	Checks	Total Extra Charge Revenue			
d	e	f	g	h	i	j	k	l
$ 8 115 30	$ 13 959 75	$ 496 05	$ 12 55	$ 13 95	$ 522 55	$ 14 482 30	$ 906 50	$ 15 388 80
3 002 20	4 984 15	225 71	4 35	24 00	254 06	5 229 21	30 80	5 269 01
3 272 00	6 466 80	138 00	1 80	99 85	239 65	6 706 45	774 30	7 480 75
745 70	1 150 80	8 10	0 40	11 90	20 40	1 170 20	8 60	1 179 80
13 907 60	24 638 90	788 10	33 65	106 10	926 85	25 565 75	839 40	26 405 15
13 875 90	24 017 55	991 05	22 25	85 80	1 099 10	25 116 65	1 546 55	26 663 20
8 768 90	15 651 50	589 00	32 60	104 75	726 35	16 377 85	233 80	16 611 65
2 736 50	5 733 10	226 95	4 40	60 95	292 30	6 025 40	191 20	6 216 60
6 618 10	11 267 05	356 55	16 45	77 55	450 55	11 717 60	137 20	11 854 80
2 355 50	4 185 30	125 70	5 85	40 00	171 55	4 356 85	462 00	4 818 85
14 495 20	22 208 20	909 00	20 95	40 65	970 60	23 178 80	1 021 90	24 200 70
2 634 70	4 474 45	159 30	4 60	16 65	180 55	4 655 00	164 00	4 819 00
7 740 40	12 424 80	424 80	13 75	26 60	465 15	12 889 95	265 65	13 155 60
9 138 20	12 967 55	287 35	5 65	75 05	368 05	13 335 60		13 335 60
14 564 00	20 879 35	574 20	21 50	36 80	632 55	21 511 90	325 15	21 837 05
5 252 30	10 719 30	465 15	12 90	66 10	544 15	11 263 45	1 574 80	12 838 25
5 956 40	10 560 95	530 75	24 05	42 55	597 35	11 158 30	931 60	12 089 90
7 422 10	10 444 10	214 80	4 40	27 50	246 70	10 690 80	199 85	10 890 65
268 30	595 30	24 45	0 80	0 95	26 20	621 50	-	621 50
9 461 90	12 640 05	299 85	8 55	10 75	319 15	12 959 20	891 50	13 850 70
15 979 30	23 370 50	544 70	23 15	64 40	632 25	24 002 75	1 991 85	25 994 60
311 40	686 85	51 60	0 80	0 90	53 30	740 15	215 50	955 65
10 849 80	23 675 00	1 191 15	29 45	99 20	1 319 80	24 994 80	692 05	25 686 85
1 60	3 60	-	-	0 25	0 25	3 85	-	3 85
29 993 80	43 454 00	1 278 89	41 10	150 20	1 470 19	44 924 19	3 517 20	48 441 39
10 804 60	17 684 45	863 10	10 30	42 35	915 75	18 600 20	186 35	18 786 55
2 769 50	8 881 25	122 55	4 40	269 30	396 25	9 277 50		9 277 50
4 313 00	7 679 20	301 05	13 60	47 55	362 20	8 041 40	882 05	8 923 45
10 343 60	14 255 55	465 50	28 30	49 75	543 55	14 799 10	232 40	15 031 50
34 375 60	51 769 40	985 65	37 40	82 20	1 105 25	52 874 65	1 122 85	53 997 50
11 825 20	16 837 70	607 95	31 75	27 70	667 40	17 505 10	26 05	17 531 15
8 738 10	13 200 10	204 00	8 85	9 80	222 65	13 422 75	16 10	13 438 85
41 325 50	59 215 30	1 057 05	22 10	160 00	1 239 15	60 454 45	4 435 30	64 889 75
4 312 60	7 456 70	211 15	2 95	61 40	275 50	7 742 20	5 80	7 748 00
1 546 10	3 818 35	82 05	0 80	19 80	102 65	3 921 00	493 40	4 414 40
6 572 60	12 806 05	448 05	16 60	108 85	573 50	13 379 55	479 90	13 859 45
24 673 70	40 109 45	869 45	20 25	157 70	1 047 40	41 156 85	973 70	42 130 55
9 344 00	15 571 00	667 80	0 40	48 60	716 80	16 287 80	1 290 95	17 578 75
477 90	823 35	22 80	0 70	0 95	24 45	847 80	0 70	848 50
70 40	189 50	3 00	0 15	2 85	6 00	195 50		195 50
7 925 90	14 457 15	863 60	12 80	58 95	935 35	15 392 50	867 25	16 259 75
16 379 80	23 605 85	442 35	17 10	45 85	506 30	24 111 15	1 614 70	25 725 85
428 10	863 15	32 25	0 90	3 75	36 90	900 05	16 80	916 85
18 726 00	30 526 20	853 05	28 55	35 50	917 10	31 443 30	2 149 30	33 592 60
2 106 90	3 350 60	105 30	4 40	12 90	122 60	3 473 20	80 05	3 553 25
5 737 90	9 202 90	151 95	7 85	14 20	174 00	9 377 90	251 10	9 629 00
2 233 40	3 935 95	86 25	3 40	50 55	140 20	4 076 15	16 95	4 093 10
5 636 00	8 647 45	281 55	9 40	26 75	317 70	8 965 15	923 80	9 888 65
2 017 90	3 294 85	101 10	0 75	10 45	112 30	3 407 15	67 35	3 474 50
2 151 00	4 126 80	221 80	7 10	23 90	252 80	4 478 90	237 30	4 715 20

3 272 00	6 466 80	138 00	1 80	99 85	239 65	6 706 45	774 30	7 480 75
745 70	1 180 80	8 10	0 40	11 90	20 40	1 170 90	8 90	1 179 80
13 907 60	24 638 90	788 10	33 65	105 10	926 85	25 565 75	839 40	26 405 15
13 875 90	24 017 85	991 05	22 25	85 80	1 099 10	25 116 65	1 546 55	26 663 20
8 768 90	15 651 80	589 00	32 60	104 75	726 35	16 377 85	233 80	16 611 65
2 736 50	5 733 10	226 95	4 40	60 95	292 30	6 025 40	191 20	6 216 60
6 618 10	11 267 05	356 55	16 45	77 55	450 55	11 717 60	137 20	11 854 80
2 355 50	4 185 30	125 70	5 85	40 00	171 55	4 356 85	462 00	4 818 85
14 495 20	22 208 20	909 00	20 95	40 65	970 60	23 178 80	1 021 90	24 200 70
2 634 70	4 474 45	159 30	4 60	16 65	180 55	4 655 00	164 00	4 819 00
7 740 40	12 424 80	424 80	13 75	26 60	465 15	12 889 95	265 65	13 155 60
9 138 20	12 967 55	287 35	5 65	75 05	368 05	13 336 60		13 336 60
14 554 00	20 879 35	574 20	21 55	36 80	632 55	21 511 90	325 15	21 837 05
5 252 30	10 719 30	465 15	12 90	66 10	544 15	11 263 45	1 574 80	12 838 25
5 956 40	10 560 95	530 75	24 05	42 55	597 35	11 158 30	931 60	12 089 90
7 422 10	10 444 10	214 80	4 40	27 50	246 70	10 690 80	199 85	10 890 65
268 30	595 30	24 45	0 80	0 95	26 20	621 50	-	621 50
9 461 90	12 640 05	299 85	8 55	10 75	319 15	12 969 20	891 50	13 850 70
15 979 30	23 370 50	544 70	23 15	64 40	632 25	24 002 75	1 991 55	25 994 30
311 40	686 85	51 60	0 80	0 90	53 30	740 15	215 50	956 65
10 849 80	23 675 00	1 191 15	29 45	99 20	1 319 80	24 984 80	692 05	25 686 85
-	-	-	-	-	-	-	-	-
1 60	3 60	-	-	0 25	0 25	3 85	-	3 85
29 993 80	43 454 00	1 278 89	41 10	150 20	1 470 19	44 924 19	3 517 20	48 441 39
10 804 60	17 684 45	863 10	10 30	42 35	915 75	18 600 20	186 35	18 786 55
2 769 50	8 881 25	122 55	4 40	269 30	396 25	9 277 50		9 277 50
4 313 00	7 679 20	301 05	13 60	47 55	362 20	8 041 40	882 05	8 923 45
10 343 60	14 255 55	465 50	28 30	49 75	543 55	14 799 10	232 40	15 031 50
34 375 60	51 769 40	985 65	37 40	82 20	1 105 25	52 874 65	1 122 85	53 997 50
11 825 20	16 837 70	607 95	31 75	27 70	667 40	17 505 10	26 05	17 531 15
8 738 10	13 200 10	204 00	8 85	9 80	222 65	13 422 75	16 10	13 438 85
41 325 50	59 215 30	1 057 05	22 10	160 00	1 239 15	60 454 45	4 435 30	64 889 75
4 312 60	7 466 70	211 15	2 95	61 40	275 50	7 742 20	5 80	7 748 00
1 546 10	3 818 35	82 05	0 80	19 80	102 65	3 921 00	493 40	4 414 40
6 572 60	12 806 05	448 05	16 60	108 85	573 50	13 379 55	479 90	13 859 45
24 673 70	40 109 45	869 45	20 25	157 70	1 047 40	41 156 85	973 70	42 130 55
9 344 00	15 571 00	667 80	0 40	48 60	716 80	16 287 80	1 290 95	17 578 75
477 90	823 35	22 80	0 70	0 95	24 45	847 80	0 70	848 50
70 40	189 50	3 00	0 15	2 85	6 00	195 50		195 50
7 925 90	14 457 15	863 60	12 80	58 95	935 35	15 392 50	867 25	16 259 75
16 379 80	23 605 85	642 35	17 10	45 85	506 30	24 111 15	1 614 70	25 725 85
428 10	863 15	32 25	0 90	3 75	36 90	900 05	16 80	916 85
18 726 00	30 526 20	863 05	28 55	35 50	917 10	31 443 30	2 149 30	33 592 60
2 106 90	3 350 60	105 30	4 40	12 90	122 60	3 473 20	80 05	3 553 25
5 737 90	9 203 90	151 95	7 85	14 20	174 00	9 377 90	251 10	9 629 00
2 233 40	3 935 95	86 25	3 40	50 55	140 20	4 076 15	16 95	4 093 10
8 636 00	8 647 45	281 55	9 40	26 75	317 70	8 965 15	923 80	9 888 65
2 017 90	3 294 85	101 10	0 75	10 45	112 30	3 407 15	67 35	3 474 50
2 151 00	4 126 30	321 60	7 10	23 90	352 60	4 478 90	237 30	4 716 20
21 360 80	37 880 05	1 231 80	50 75	100 85	1 383 40	39 263 45	2 920 10	42 183 55
13 014 50	20 874 25	737 70	30 90	42 25	810 85	21 685 10	601 15	22 286 25
20 821 50	27 025 35	298 80	13 05	86 05	397 90	27 423 25	508 50	27 931 75
203 80	392 10	7 95	0 40	6 30	14 65	406 75	-	406 75
$487 693 00	$779 649 10	$23 327 60	$731 90	$2 889 45	$26 948 95	$806 898 05	$37 322 30	$843 820 35
521 035 50	924 014 25	23 327 60	731 90	2 889 45	26 948 95	950 963 20	37 322 30	988 285 50
$33 342 50	$144 365 15	None	None	None	None	$144 365 15	None	$144 365 15
6.40%	18.62%					15.18%		14.61%

COMPARISON OF GROSS SELLING AND BUYING COMMISSION REVENUES (2)
FIRST FIVE MONTHS YEARS 1932 AND 1933
AS PER SHOWING BY AGENCIES' BOOKS
(ALL SPECIES)

Agency No.	1932 vs 1933 - FIRST FIVE MONTHS EACH YEAR									
	All Selling Service			All Buying Service			Selling & Buying Together		
	1932	1933	1933 Shrink	1932	1933	1933 Gain	1932	1933	1933 Shrink
a	b		c	d	f	g	h	i	j
1	$ 346 37	$ 328 42		$	$				
4	7 581 78	8 [illegible] 65		447 45	170 15				
5	7 625 87	1 773 18		123 25	56 30				
6	3 712 65	3 784 91		216 80	118 45				
12	13 908 04	11 365 72		666 80	841 55				
13	16 968 78	14 309 14		1 018 00	1 146 14				
14	12 461 99	9 261 94		1 074 80	793 48				
15	5 087 55	5 040 40		169 40	150 80				
16	5 230 40	4 908 40		467 85	342 60				
17	2 684 30	2 270 85		206 10	367 10				
18	11 825 70	10 747 80		636 00	619 10				
20	5 600 00	6 114 80		535 00	646 80				
23	7 563 95	7 828 46		2 055 00	645 00				
25	16 569 21	11 942 72		1 826 34	2 167 90				
28	9 225 66	8 528 78		383 80	203 05				
29	6 226 30	3 627 02		234 20	105 05				
33	493 00	580 48		-	-				
34	8 221 20	8 029 05		2 625 90	1 087 81				
35	8 793 23	6 427 78		808 10	461 35				
42	12 484 19	10 228 20		1 105 48	1 456 45				
43	5 395 63	3 740 54		-	-				
44	9 698 44	8 465 76		176 75	303 60				
46	22 514 89*	19 201 27*		6 657 70	5 162 34				
48	9 479 10	7 245 95		1 001 10	953 15				
51	25 819 31	19 731 31		160 00	123 00				
53	11 470 58	8 977 64		307 20	71 50				
54	41 884 00	35 419 64		5 156 80	8 043 25				
55	15 027 74	12 242 34		1 089 30	1 880 60				
59	44 796 35	36 495 50		1 421 70	3 087 30				
60	7 638 62	6 096 35		870 90	355 30				
61	2 555 49	2 905 18		101 80	32 25				
62	8 890 03	7 590 35		359 85	455 22				
63	33 534 96	26 808 93		6 243 95	9 381 25				
65	8 665 50	7 283 57		718 95	628 20				
66	449 45	504 20		246 60	229 00				
70	8 963 60	7 672 22		414 25	1 020 70				
71	14 043 99	12 145 68		1 373 40	1 812 14				
72	(1)	(1)		(1)	(1)				
73	15 821 05	13 507 34		1 021 32	1 119 15				
75	3 951 20	3 [illegible] 10		346 70	490 75				
76	2 746 38	2 261 57		627 25	416 05				
77	4 129 25	2 753 75		289 28	196 80				
78	2 738 80	2 010 00		312 30	252 20				
79	3 491 46	3 443 23		286 30	212 60				
82	22 378 43	17 178 84		1 057 70	832 56				
83	13 560 15	10 589 10		747 40	365 75				
84	9 824 89	8 728 16		842 40	197 83				
Totals	$511 275 41	$415 478 90	$95 796 51	$45 827 57	$49 001 35	$3 173 78	$557 103 98	$464 480 25	$92 622 73
[illegible] Shrink	-	-	18.74%	-	-	6.93%	-	-	18.83

No.	1932	1933	1933 Shrink	1932	1933	1933 Gain	1932	1933	1933 Shrink
a	b		4	e	f	g	h	i	j
1	$ 346 37	$ 328 42		$	$				
4	7 581 78	6 793 65		447 45	170 15				
5	7 625 87	1 773 18		123 25	56 20				
6	3 712 65	3 384 91		216 80	118 45				
12	13 908 04	11 365 72		666 80	841 55				
13	16 968 78	14 309 14		1 018 00	1 146 14				
14	12 461 99	9 281 94		1 074 80	793 48				
15	5 087 55	5 040 40		169 40	150 80				
16	5 230 40	4 908 40		467 85	342 60				
17	2 684 30	3 270 85		206 10	387 10				
18	11 826 70	10 747 80		634 00	619 10				
20	5 600 00	6 114 80		535 00	646 80				
23	7 563 95	3 828 45		2 055 00	645 00				
25	16 569 21	11 942 72		1 826 34	2 167 90				
28	9 225 66	8 528 78		383 80	203 05				
29	6 226 30	3 627 02		234 20	105 05				
33	493 00	580 48		-	-				
34	8 221 20	8 029 05		2 625 90	1 087 80				
35	8 793 23	6 477 78		808 10	461 35				
42	12 484 19	10 228 20		1 105 48	1 459 45				
43	5 395 63	3 740 54		-	-				
44	9 698 44	8 465 76		176 75	303 60				
46	22 514 89*	19 201 27*		6 657 70	5 162 34				
48	9 478 10	7 345 95		1 001 10	983 15				
51	25 519 31	19 731 31		160 00	122 00				
53	11 470 58	8 977 64		307 30	71 50				
54	41 884 00	35 419 64		5 156 80	8 043 25				
55	15 027 74	12 242 34		1 089 30	1 880 60				
59	44 786 35	36 495 80		1 421 70	3 087 30				
60	7 638 62	6 096 35		370 90	353 30				
61	2 555 49	2 905 18		101 80	32 25				
62	8 890 03	7 590 35		359 85	455 22				
63	33 534 96	26 808 93		6 243 95	9 381 25				
65	8 665 50	7 283 57		718 95	628 20				
66	449 45	504 30		246 60	229 00				
70	8 963 60	7 672 22		414 25	1 020 70				
71	14 043 99	12 145 68		1 373 40	1 812 14				
72	(1)	(1)		(1)	(1)				
73	15 821 05	13 507 34		1 021 32	1 119 15				
75	3 951 20	3 959 10		346 70	490 75				
76	2 746 39	2 261 57		627 25	416 05				
77	4 129 25	2 753 75		289 28	195 80				
78	2 738 80	2 010 00		312 30	252 20				
79	3 491 46	3 443 23		256 30	212 60				
82	22 378 43	17 178 84		1 057 70	832 56				
83	13 560 15	10 589 10		747 40	365 75				
84	9 824 89	8 728 16		842 40	197 85				
Totals	$511 275 41	$415 478 90	$95 796 51	$45 827 87	$49 001 35	$3 173 78	$567 102 98	$464 480 26	$92 622 72
% 1933 Shrink	-	-	18.74%	--	--	6.93%	--	--	16.63%

Note: 1932 earnings under Tariff No. 2; 1933 earnings under Tariff No. 3

* Seconds not included.
(1) 1932 not reported. 1933 data not useful and omitted here.
(2) Compiled from special report made by respective agencies.

CONFISCATORY ASPECT OF THE PRESCRIBED RATES, BY SPECIES, SHOWING NET AMOUNTS AVAILABLE TO OWNERS FOR SERVICES RENDERED, ON BASIS OF GOVERNMENT COSTS

Comparative revenue yield of the prescribed rates determined by applying same to the volume based

Agency No.	Govt Costs S&B exclusive of Return on Investment	Less Owners Compensation as included in Govt Costs	Govt Costs minus allowance for owners compensation	No. of Head S&B per Govt. Audit	Avg Revenue per head under prescribed rates	REVENUE AT JUNE 14, 1933 RATES (1) Selling & Buying Together	Less Increased Revenue on Buying service	NET YIELD AVAILABLE FOR RETURN ON INV & COMPENSATION OF OWNER	Govt Costs S&B exclusive of Return on Investment	Less Compensation included in Costs
a	b	c	d	e	f	g	h	i	k	m
1	-	-	-	-	-	-	-		-	
4	$ 19 566 33	$ 423 00	$ 19 145 33	35 763	46.66¢	$ 16 687 02	$ 16 506 56	¢ 2 638 77	$ 2 172 85	$
5	-	-	-	-	-	-	-			
6	9 931 77	4 426 00	5 506 77	15 841	51.77	8 200 89	7 847 58	2 340 81	3 331 35	
7	9 951 84	4 034 44	5 917 40	15 790	48.55	7 681 84	7 585 34	1 770 94	10 710 54	
9	1 798 76	188 71	1 610 05	3 113	53.87	1 676 97	1 606 79	3 26	5 153 52	
11	1 814 58	-	1 814 58	1 878	47.79¢	897 50	895 26	919 32	854 62	
12	38 902 50	-	38 901 80	67 947	44.94	30 535 38	30 207 17	8 694 62	7 985 87	
13	36 663 51	8 501 66	28 041 85	63 945	47.11	30 124 49	29 578 09	1 516 24	9 195 48	
14	25 466 62	6 969 97	18 496 68	42 094	47.02	19 792 60	19 427 31	930 66	6 102 96	
15	8 861 17	3 726 65	5 135 52	14 983	49.24	7 367 78	7 264 89	2 129 17	5 668 76	
16	14 123 71	7 620 00	6 503 71	26 673	48.48	12 931 07	12 611 49	6 107 78	3 248 65	
17	6 539 66	3 437 56	3 102 10	11 336	48.21	5 465 09	5 402 45	2 300 35	1 655 24	
18	28 886 44	8 915 00	19 171 44	58 107	51.26	30 298 26	29 421 01	10 245 57	3 331 30	
19	7 813 07	875 30	6 937 77	12 870	48.84	6 101 48	6 036 56	901 11	1 062 16	
20	15 478 84	2 850 00	16 628 84	32 320	47.35	15 303 32	14 996 10	1 632 74	930 69	
23	20 089 16	4 143 15	16 746 01	34 942	53.50	18 693 97	17 842 81	1 096 80	397 95	
26	29 617 72	4 860 00	24 757 72	53 318	51.61	27 514 32	26 341 22	1 583 50	7 443 81	
26	15 094 79	3 221 72	11 873 07	30 383	44.73	13 590 34	13 454 96	1 891 69	6 712 13	
29	15 207 31	3 949 92	11 257 41	25 581	49.53	12 414 46	12 351 23	1 033 32	3 281 77	
30	13 961 84	5 904 30	8 057 54	23 436	43.34	11 328 98	11 290 42	3 232 88	1 192 32	
33	956 71	630 42	326 29	1 479	47.59	703 86	724 15	397 86	328 62	
34	21 474 64	2 180 00	19 314 64	52 225	50.99	26 629 53	22 890 36	3 575 72	3 867 17	
36	45 498 86	20 107 23	25 381 63	61 688	46.75	28 825 12	28 518 77	3 137 14	4 919 98	
37	1 209 91	633 80	576 11	2 122	48.83	966 15	966 15	391 04	11 88	
42	36 [illegible]	13 506 77	22 526 00	67 492	43.79	29 554 78	29 087 83	6 881 53	4 173 40	
43	31 26	31 26	-	-	-	-	-	-	-	
44	90 00	-	90 00	-	64.17	-	-	90 00	-	
46	78 001 78	20 330 86	57 670 92	157 432	48.86	76 921 28	70 026 42	12 354 94	11 267 00	
48	23 837 02	9 794 70	14 042 32	42 359	51.88	21 967 38	21 331 40	7 289 08	1 746 46	
51	18 699 70	3 894 84	14 804 86	22 456	46.41	10 429 93	10 816 53	4 288 33	33 876 68	
52	13 668 96	3 990 00	9 678 96	21 600	48.61	10 543 51	10 421 57	742 61	1 994 06	
53	26 940 38	14 011 20	11 929 18	28 556	56.45	15 835 41	15 645 70	3 816 52	5 656 92	
54	94 747 90	-	94 747 90	185 312	46.36	85 892 11	82 717 81	12 080 09	7 367 18	
55	33 826 26	8 822 00	24 994 28	61 113	52.34	31 986 84	30 820 14	5 828 88	4 124 94	
56	20 330 78	11 349 73	8 981 05	34 088	46.79	15 938 74	15 761 38	6 800 33	2 851 67	
59	85 436 61	12 776 50	72 659 31	164 860	48.77	77 108 02	74 494 65	1 825 34	15 330 44	
60	10 688 32	4 428 65	6 259 67	19 205	52.56	10 094 15	9 511 49	3 261 82	5 804 76	
61	5 896 48	301 80	5 594 68	10 731	42.07	4 514 53	4 660 07	634 61	1 702 72	
62	18 726 26	3 582 00	15 144 26	31 539	49.01	15 457 26	15 243 32	99 06	4 700 15	
63	78 486 49	20 422 70	58 064 78	128 886	48.14	62 046 68	59 826 26	1 761 48	29 812 81	
65	23 984 86	3 556 78	20 379 10	40 303	48.34	19 482 47	19 340 31	1 038 79	2 082 74	
66	1 764 49	1 032 17	731 32	3 676	52.02	1 902 85	1 714 76	983 44	134 41	
67	384 80	273 15	111 65	454	52.55	239 59	238 44	126 79	407 82	
70	23 120 48	3 015 00	20 105 48	38 987	49.37	19 238 01	18 702 00	1 403 48	2 940 43	
71	42 443 37	12 976 45	29 863 92	62 038	47.42	29 418 42	28 763 73	800 19	7 459 60	
72	1 161 44	282 67	878 18	2 397	47.51	1 138 81	1 124 74	248 89	197 28	
73	49 079 27	13 372 50	38 706 77	79 012	44.67	35 294 86	35 264 43	442 34	9 450 42	
74	6 639 18	2 174 96	4 464 22	8 770	52.96	4 634 00	4 373 97	90 25	848 92	
75	16 040 16	4 224 30	11 816 16	25 113	47.71	11 981 41	11 852 48	36 32	1 866 96	
76	6 319 82	2 835 40	3 484 82	5 614	52.99	5 097 11	4 931 91	1 457 09	1 879 14	
77	13 728 30	5 775 00	7 953 30	23 436	48.22	10 832 12	10 [illegible] 69	2 277 46	2 049 46	
78	6 099 72	225 35	5 874 37	10 919	51.28	5 547 96	5 321 00	553 37	801 94	
79	6 323 79	2 000 71	4 323 08	11 360	49.13	5 481 17	5 316 42	983 34	822 52	
[illegible]	[illegible] 08	19 180 62	44 480 42	110 449	44.69	48 389 68	47 [illegible] 10	3 412 06	7 789 36	

6	9 931 77	4 425 00	5 506 77	15 841	51.77	8 200 89	7 847 58	2 340 81	3 331 35		
7	9 951 84	4 034 44	5 917 40	15 790	48.55	7 681 84	7 688 34	1 770 94	10 710 54		
9	1 798 76	188 71	1 610 05	3 113	53.57	1 676 97	1 606 79	3 26	5 153 52		
11	1 814 58	-	1 814 58	1 878	47.79*	897 50	895 26	919 32	854 62		
12	38 902 50	-	38 901 80	67 947	44.94	30 535 38	30 207 17	8 694 62	7 985 82		
13	36 663 51	8 501 66	28 061 85	63 945	47.11	30 124 49	29 578 09	1 516 24	9 195 48		
14	25 466 62	6 969 97	18 [illegible] 65	42 094	47.02	19 792 60	19 427 31	930 66	6 102 96		
15	8 861 17	3 725 65	5 135 52	14 983	49.24	7 367 78	7 264 89	2 129 17	5 668 76		
16	14 123 71	7 620 00	6 503 71	26 673	48.48	12 931 07	12 611 49	6 107 78	3 248 65		
17	6 539 66	3 437 56	3 102 10	11 336	48.21	5 465 09	5 402 48	2 300 35	1 655 24		
18	28 086 44	8 915 00	19 171 44	89 107	51.26	20 298 26	29 421 01	10 246 57	3 331 30		
19	7 813 07	875 30	6 937 77	12 570	48.54	6 101 48	6 036 66	901 11	1 082 16		
20	15 478 84	2 850 00	16 628 84	32 320	47.35	15 303 32	14 996 10	1 632 74	930 69		
23	20 089 16	4 143 15	15 746 01	34 942	53.50	18 693 97	17 842 81	1 096 80	397 95		
25	29 617 72	4 860 00	24 757 72	53 312	51.61	27 514 32	26 341 22	1 583 50	7 443 81		
26	15 094 79	3 221 72	11 873 07	30 383	44.73	13 590 32	13 454 96	1 891 89	6 712 13	1	
29	15 207 37	3 949 92	11 257 41	25 581	49.53	12 414 46	12 351 25	1 033 32	3 281 77		
30	13 951 84	5 904 30	8 057 54	23 436	49.34	11 328 96	11 290 42	3 232 88	1 192 32		
33	958 71	632 42	326 29	1 479	47.59	703 86	724 15	397 86	328 62		
34	21 474 64	2 180 00	19 314 64	52 225	50.99	26 629 53	22 890 36	3 575 72	3 667 17		
35	45 498 86	20 107 23	25 381 63	61 688	46.75	28 825 12	28 518 77	3 137 14	4 919 98		
37	1 209 91	633 80	575 11	2 122	48.53	966 15	966 15	391 04	11 85		
42	36 [illegible] 77	13 506 77	22 526 00	67 492	43.79	29 554 78	29 087 83	6 881 53	4 173 60	2	
43	31 25	31 25	-	-	-	-	-	-	-		
44	90 00	-	90 00	-	64.17	-	-	-	-		
46	78 001 76	20 330 86	57 670 88	137 432	48.86	76 921 28	70 025 42	12 354 84	11 267 00		
48	23 837 02	9 794 70	14 042 32	42 359	51.86	21 967 38	21 331 40	7 289 08	1 749 46		
51	18 699 70	3 894 84	14 804 86	22 456	46.41	10 439 93	10 516 53	4 288 33	33 576 08	11	
52	13 668 96	3 990 00	9 678 96	21 600	48.61	10 543 51	10 421 57	742 61	1 994 06		
53	25 940 38	14 011 20	11 829 18	28 558	55.45	15 835 41	15 645 70	3 816 52	5 856 92		
54	94 747 90	-	94 747 90	185 312	46.36	85 892 11	82 717 81	12 030 09	7 367 18		
55	33 826 28	8 822 00	24 994 28	61 113	52.34	31 986 54	30 520 14	5 828 86	4 124 94		
56	20 330 78	11 349 73	8 981 05	34 058	46.75	18 938 74	18 781 38	6 800 33	2 851 62		
59	85 436 61	12 776 50	72 659 31	164 860	48.77	77 105 02	74 494 65	1 825 34	16 320 44	4	
60	10 688 32	4 428 65	6 259 67	19 205	52.56	10 094 15	9 511 49	3 261 82	5 804 76	1	
61	5 596 48	301 80	5 294 68	10 731	42.07	4 514 53	4 660 07	634 61	1 702 72	1	
62	18 726 26	3 582 00	15 144 26	31 539	49.01	15 457 26	15 243 32	99 06	4 700 15		
63	78 488 49	20 423 70	58 064 78	128 865	48.14	62 046 68	59 826 26	1 761 48	29 812 81	7	
65	23 984 88	3 556 78	20 379 10	40 303	48.34	19 482 47	19 340 31	1 038 79	2 082 74		
66	1 764 49	1 033 17	731 32	3 676	52.02*	1 901 85	1 714 76	983 44	134 41		
67	384 80	273 15	111 65	454	52.55	239 58	238 44	126 79	407 52		
70	23 120 48	3 015 00	20 105 48	38 967	49.37	19 238 01	18 702 00	1 403 48	2 949 43		
71	42 443 37	12 975 45	29 563 92	62 028	47.42	29 418 42	28 763 73	800 19	7 459 60	1	
72	1 161 82	282 67	879 15	2 397	47.51	1 138 81	1 124 74	248 89	197 28		
73	48 079 27	13 372 50	35 706 77	79 012	44.67	35 294 66	35 264 43	442 34	9 450 42		
74	6 639 18	2 174 96	4 464 22	8 750	52.96	4 634 00	4 373 97	90 28	648 92		
75	15 040 16	4 224 30	11 816 16	25 113	47.71	11 981 41	11 852 48	36 32	1 866 96		
76	6 319 82	2 835 40	3 484 82	8 615	52.99	5 097 11	4 931 91	1 457 09	1 579 14		
77	13 728 20	5 775 00	7 953 20	23 432	46.22	10 832 12	10 830 63	2 279 48	2 649 46		
78	6 099 72	225 35	5 874 37	16 919	51.28	5 547 98	5 321 00	353 37	801 94		
79	6 323 79	2 000 72	4 323 06	11 360	49.13	5 581 17	5 316 42	993 34	822 52		
83	63 661 05	19 180 62	44 480 43	110 449	44.69	49 389 66	47 858 43	3 412 06	7 749 38		
84	57 492 02	20 316 10	37 175 92	122 157	48.32	59 002 10	60 525 27	23 349 35	1 632 03		
85	38 701 96	9 420 25	29 281 67	67 508	47.97	33 432 04	33 162 22	2 380 58	4 509 95	2	
87	963 63	97 20	866 43	991	42.68	422 96	427 34	439 09	186 17		
89	1 899 96	144 89	1 745 07	2 897	47.79*	1 384 48	1 355 77	389 30	221 39		
TOTAL 89	$1 296 742 61	$325 788 69	$970 954 12	2 284 207	47.79	$1 095 012 69	$1 063 840 90	$92 [illegible] 66	$263 730 42		$ 80
10	66 061 34		66 061 34	119 514	47.79*	57 115 74	52 737 38	13 323 96	26 949 72		
36	49 132 39		49 132 39	88 051	47.79*	41 [illegible] 63	40 024 90	9 307 39	32 967 12		
MARKET	$1 411 938 44	$325 788 69	$1 086 149 75	2 489 772		$1 [illegible] 252 30	$1 156 603 08	$70 [illegible] 33	$323 647 26		$ 80

(*) Average of all other agencies.

Includes revenue from Seconia at prevailing rates, and revenue fr[illegible] [illegible] [illegible] [

ER NO. 311, ORDER OF JUNE 14, 1933

ED RATES, BY SPECIES, SHOWING NET AMOUNTS AVAILABLE TO COMPENSATE
REHENSIVE, ON BASIS OF GOVERNMENT COSTS
determined by applying rates to the volume handled by individual firms in 1931

STATEMENT NO. 2
Sheet 1 of 2

RATES reased on Buying	NET YIELD AVAILABLE FOR RETURN ON INV & COMPENSATION OF OWNER	Govt Costs S&B exclusive of Return on Investment	Less Owners Compensation as included in Govt Costs	Govt Costs minus allowance for owners compensation	No. of Head S&B per Govt Audit	Avg Revenue per head under prescribed rates	REVENUE AT JUNE 14, 1933 RATES (1) Selling & Buying Together	Less Increased Revenue on Buying Service	NET YIELD AVAILABLE FOR RETURN ON INV & COMPENSATION OF OWNER
	1	b	c	d	e	f	g	h	i
506 56	$ 2 638 77	$ 2 172 85	$ 27 00	$ 2 146 85	9 552	15.784	$ 1 805 40	$ 1 677 38	$ 569 80
847 58	2 340 81	3 331 38	2 475 00	856 38	8 168	22.10	1 806 13	1 819 10	955 76
693 34	1 770 94	10 710 54	3 793 19	6 912 35	41 090	23.83	9 791 78	9 452 12	2 560 77
606 79	3 26	5 153 52	912 13	4 241 39	19 051	21.81	4 155 02	4 032 62	208 87
895 25	919 32	834 62	-	834 62	2 990				834 62
207 17	8 694 62	7 985 82	-	7 985 82	28 132	20 260	5 699 84	5 630 91	2 354 91
578 09	1 816 24	9 195 45	571 20	8 624 25	40 816	20.94	8 546 87	8 543 59	74 66
427 31	930 66	6 102 96	556 83	5 546 13	27 819	19.00	5 285 61	5 288 79	257 34
264 89	2 129 17	5 666 76	3 126 54	2 542 22	20 743	23.17	4 806 15	4 829 77	2 287 55
811 49	6 107 78	3 248 65	772 80	3 075 85	8 495	23.45	1 992 78	1 997 66	1 078 28
402 45	2 300 35	1 655 24	1 078 92	566 32	6 872	22.73	1 562 01	1 606 05	1 045 73
421 01	10 246 57	3 331 30	836 65	2 498 65	11 653	18.85	2 196 59	2 176 56	318 67
026 66	801 11	1 062 16	-	1 063 16	4 497	20.21	908 84	720 04	343 12
996 10	1 632 74	930 69	-	930 69	3 727	20.50	764 04	764 04	166 65
842 81	1 096 80	397 95		397 95	1 836	23.17	385 89	355 89	42 06
341 22	1 583 50	7 443 81	-	7 443 81	19 201	22.94	4 404 71	4 363 93	3 079 88
464 96	1 891 69	6 712 13	1 744 82	4 967 31	20 321	21.37	4 342 60	4 324 23	843 09
351 23	1 033 32	3 281 77	223 65	3 058 12	12 619	20.29	2 560 40	2 535 15	522 37
290 42	3 232 88	1 192 32	81 00	1 111 24	3 489	23.82	820 61	820 61	290 63
734 15	397 86	328 62	5 86	322 76	1 890	22.12	373 83	373 83	51 07
880 36	3 575 72	3 667 17	-	3 667 17	16 312	19.18	3 128 64	2 572 5[illegible]	1 794 60
518 77	3 137 14	4 919 98	142 80	4 777 48	12 017	22.80	2 739 38	2 721 60	2 065 88
966 15	391 04	11 85	6 53	5 32	35	25.29	8 85	3 85	3 53
087 83	6 861 83	4 173 40	2 607 51	1 565 89	11 442	21.70	2 482 91	2 438 25	872 35
-	-	-	-	-	-	-	-	-	-
-	90 00	-	-	-	-	25.00	-	-	-
025 42	12 354 84	11 267 00	724 20	10 542 80	33 474	20.11	6 731 62	6 682 19	3 860 61
551 40	7 289 08	1 748 46	89 10	1 659 58	5 952	20.88	1 242 78	1 242 16	411 42
815 53	4 288 33	33 576 08	11 153 37	22 422 71	189 184	24.76	39 413 96	39 348 [illegible]	16 925 39
421 57	742 61	1 994 06	-	1 994 06	8 196	22.25	1 379 06	1 366 19	613 87
645 70	3 816 52	5 656 92	691 40	4 965 72	18 764	20.64	3 872 89	3 803 36	1 092 36
717 81	12 030 09	7 367 18	-	7 367 18	27 122	18.86	5 120 63	4 689 97	2 707 18
830 14	5 825 86	4 124 94	43 20	4 081 74	21 227	18.77	3 984 31	3 956 88	122 86
761 38	6 800 33	2 851 63	-	2 851 63	8 191	20.22	1 656 22	1 [illegible] 36	1 228 75
496 65	1 825 34	15 320 44	4 009 35	11 311 09	70 854	20.15	14 216 63	13 778 79	2 467 70
511 49	3 261 82	5 804 76	1 815 88	3 988 90	21 164	24.05	5 089 94	5 944 04	365 14
660 07	634 61	1 702 72	1 056 27	646 45	9 679	19.98	1 929 02	1 [illegible] 73	1 229 28
243 32	99 06	4 700 15	84 00	4 616 15	15 813	23.55	3 723 26	3 [illegible] 59	900 56
826 26	1 761 48	29 812 81	7 035 24	22 777 57	130 804	17.42	26 572 02	24 063 51	1 225 34
340 31	1 038 79	2 082 74	12 91	2 069 83	7 619	19.11	1 488 99	1 [illegible] 97	612 86
716 76	983 44	134 41	-	134 41	737	23.72	174 82	174 82	60 41
238 44	126 79	407 52	30 35	377 17	6 015	24.52	1 480 89	1 490 91	1 [illegible] 74
703 00	1 403 48	2 949 43	-	2 949 43	13 628	20.11	2 740 59	2 749 97	199 46
788 73	900 19	7 469 60	1 596 80	5 873 10	20 325	19.79	4 021 82	4 011 40	1 861 70
134 74	245 89	197 28	-	197 28	1 077	20.47	220 46	221 91	[illegible]
884 43	442 34	9 450 42	270 00	9 180 42	74 425	17.83	6 034 70	4 [illegible] 61	4 274 80
575 97	90 25	646 92	-	646 92	2 364	21.69	512 75	512 75	133 17
852 48	36 32	1 866 96	-	1 866 96	8 134	21.97	1 127 94	1 096 00	870 90
911 91	1 [illegible] 09	1 879 14	15 00	1 663 14	8 629	21.17	1 828 [illegible]	1 761 34	50 [illegible]
522 68	2 [illegible] 46	2 049 46	972 00	1 077 46	10 193	18.08	1 941 61	1 914 43	826 97
121 00	353 37	801 94	2 65	799 19	4 738	18.10	657 58	720 08	99 13
[illegible]	983 34	822 59	138 41	684 11	2 969	21.27	631 61	631 51	[illegible]

7 847 58	2 340 81	3 331 35	2 475 00	856 35	8 168	22.10	1 808 19	1 312 10	989 75		
7 585 34	1 770 94	10 710 54	3 793 19	6 912 35	41 090	23.83	9 791 78	9 452 12	2 540 77		
1 606 79	3 26	5 153 52	912 13	4 241 39	19 051	21.81	4 155 02	4 032 52	208 87		
895 25	919 32	554 62	-	554 62	2 990		-	-	554 62		
30 207 17	8 694 62	7 985 82	-	7 985 82	28 132	20 26*	5 692 54	5 630 91	2 354 91		
29 578 09	1 516 24	9 195 48	571 20	8 624 28	40 816	20.94	8 546 87	8 543 59	74 66		
19 427 31	930 66	6 102 96	856 83	5 246 13	27 819	19.00	5 285 61	5 288 79	257 34		
7 264 89	2 129 17	5 668 76	3 126 54	2 542 22	20 743	23.17	4 806 15	4 829 77	2 287 55		
12 611 49	6 107 78	3 248 65	772 80	3 075 85	8 495	23.48	1 982 78	1 997 66	1 078 28		
5 402 48	2 300 35	1 655 24	1 078 92	576 32	6 872	22.73	1 582 01	1 606 05	1 049 73		
29 421 01	10 245 57	3 331 30	836 65	2 495 65	11 653	18.85	2 186 59	2 176 36	318 67		
6 036 56	901 11	1 062 16	-	1 063 16	4 497	20.31	908 84	720 04	343 12		
14 996 10	1 632 74	930 69	-	930 69	3 727	20.50	764 04	764 04	166 65		
17 842 81	1 096 80	397 95		397 95	1 636	23.17	385 85	355 80	42 06		
26 341 22	1 583 50	7 443 81	-	7 443 81	19 201	22.94	4 404 71	4 345 93	3 079 88		
13 454 96	1 891 89	6 712 13	1 744 82	4 967 31	20 321	21.37	4 342 60	4 324 23	843 08		
12 351 23	1 033 32	3 281 77	223 65	3 058 12	12 619	20.29	2 560 40	2 535 15	522 37		
11 290 42	3 232 88	1 192 32	81 00	1 111 24	3 489	23.82	820 61	820 61	290 63		
724 15	397 86	328 62	5 86	322 76	1 690	22.12	373 83	373 83	51 07		
22 890 36	3 575 72	3 667 17	-	3 667 17	16 312	19.18	3 128 64	2 572 57	1 094 60		
28 518 77	3 137 14	4 919 98	142 80	4 777 48	12 017	22.80	2 739 38	2 721 60	2 065 88		
966 15	391 04	11 86	6 53	5 32	38	25.29	8 86	9 86	3 53		
29 087 53	6 861 53	4 173 40	2 607 51	1 565 89	11 442	21.70	2 482 91	2 438 25	872 36		
-	-	-	-	-	-	-	-	-	-		
-	90 00	-	-	-	-	25.00	-	-	-		
70 025 42	12 354 54	11 267 00	724 20	10 542 80	33 474	20.11	6 731 62	6 882 19	3 860 61		
21 331 40	7 289 08	1 746 46	89 10	1 669 88	5 952	20.88	1 242 78	1 242 16	411 40		
10 816 53	4 288 33	33 876 08	11 153 37	22 422 71	189 184	24.76	39 413 96	39 348 30	16 926 30		
10 421 87	742 61	1 994 06	-	1 994 06	6 196	22.25	1 379 06	1 360 19	613 87		
15 645 70	3 816 52	5 856 92	891 60	4 965 72	18 764	20.64	3 872 89	3 803 86	1 092 36		
82 717 81	12 030 09	7 367 18	-	7 367 18	27 122	18.88	5 120 63	4 659 97	2 707 18		
30 520 14	5 525 86	4 124 94	43 20	4 081 74	21 227	18.77	3 984 31	3 956 88	122 86		
15 761 38	6 800 33	2 851 63	-	2 851 63	8 191	20.22	1 656 22	1 852 86	1 228 75		
74 494 65	1 825 34	16 320 44	4 009 38	11 311 06	70 864	20.18	14 216 63	13 778 79	2 467 70		
9 511 49	3 261 82	5 804 76	1 815 88	3 986 90	21 164	24.08	5 089 94	5 944 04	365 14		
4 660 07	634 61	1 702 72	1 056 27	646 45	9 679	19.98	1 929 02	1 878 73	1 229 28		
15 243 32	99 06	4 700 15	84 00	4 616 15	18 810	22.55	3 723 26	3 715 59	900 56		
69 826 26	1 761 48	29 812 81	7 035 24	22 777 57	130 806	17.62	26 572 02	24 063 51	3 285 34		
29 340 31	1 038 79	2 082 74	12 91	2 069 83	7 819	19.11	1 458 99	1 486 97	612 86		
1 714 78	983 44	134 41	-	134 41	737	23.72	174 82	174 82	40 41		
238 44	126 79	407 52	30 35	377 17	6 015	24.52	1 480 83	1 490 91	1 107 74		
18 702 00	1 403 48	2 949 43	-	2 949 43	13 628	20.11	2 740 59	2 749 97	199 46		
28 783 73	800 19	7 469 60	1 596 80	5 873 10	20 323	19.79	4 021 53	4 011 40	1 861 70		
1 124 74	245 89	197 28	-	197 28	1 077	20.47	220 46	221 91	74 35		
35 264 43	442 34	9 450 42	270 00	9 180 42	74 425	17.83	6 034 70	4 905 67	4 274 80		
4 373 97	90 28	648 92	-	648 92	2 364	21.69	512 75	512 75	133 17		
13 852 48	36 32	1 866 96	-	1 866 96	5 134	21.97	1 127 94	1 036 00	570 90		
4 981 92	1 481 09	1 879 14	15 00	1 662 14	5 629	21.17	1 826 76	1 761 34	90 20		
10 990 68	2 272 68	2 949 46	972 00	1 977 46	10 192	15.08	1 941 60	1 914 43	536 97		
3 321 00	353 37	801 94	2 65	799 19	4 738	18.10	857 58	720 08	79 10		
5 316 42	993 34	822 52	138 41	686 11	2 969	21.27	631 61	631 51	54 60		
5 832 40	3 412 06	7 749 38	450 00	7 339 38	30 135	20 08	6 051 11	6 012 80	1 326 78		
10 525 27	23 349 35	1 632 03	26 34	1 608 69	4 078	21.31	864 94	791 11	814 58		
12 162 22	2 380 59	4 509 95	2 289 88	2 220 07	11 944	20.95	2 502 27	2 366 50	46 43		
487 34	439 09	186 17	21 80	137 57	399	26.31	104 58	104 58	38 99		
1 358 77	389 30	221 39		131 32	249	20.26*	52 19	52 19	79 20		
43 840 80	$92 [illegible] 3 66	$263 730 42	$ 80 891 66	$ 212 800 76	1 045 049	20.26	$ 217 776 02	$ 210 870 44	$ 1 938 32		
12 737 38	13 322 96	26 949 72		26 949 72	96 653	20.26*	20 258 47	20 235 60	6 714 32		
10 024 90	9 107 39	32 967 12		32 967 12	147 928	20.26*	31 004 45	30 958 99	8 008 13		
6 903 08	$70 486 33	$323 647 26	$ 80 891 66	$ 272 725 60			$ 259 038 94	$ 262 064 83	10 660 77		

B. A. I. DOCKET NO. 341. ORDER OF JUNE 14, 1935

CONFISCATORY ASPECT OF THE PRESCRIBED RATES BY SPECIES, SHOWING NET AMOUNTS OWNERS FOR S[illegible], ON BASIS OF [illegible]

Compar[illegible]ve reve[illegible]y [illegible] of the pr[illegible] [illegible] by applying [illegible]

Agency No.	Govt Costs S&B exclusive of Return on Investment	Less Owners Compensation as included in Govt Costs	Govt Costs minus allowance for owners compensation	No. of Head S&B per Govt Audit	Avg Revenue per head under prescribed rates	REVENUE AT JUNE 14, 1933 RATES (1) Selling & Buying Together	Less Increased Revenue on buying service	NET YIELD AVAILABLE FOR RETURN ON INV & COMPENSATION OF OWNER	NET YIELD AVAILABLE FOR RETURN ON INV & COMPENSATION OF OWNER	Less [illegible] lowest of 6
a	b	c	d	e	f	g	h	i	j	
1	$ 3 768 31	$ 1 608 00	$ 2 157 31	43 274	6.60¢	$ 2 856 08	$ 2 873 33	$ 715 02	$ 716 02	$
4	229 05		229 05	1 896	8.33	157 94	150 12	7[illegible]	[illegible]	
5	17 272 69	4 581 98	12 690 71	209 203	6.62	13 349 57	13 883 83	1 193 12	1 193 12	
6	248 96	-	248 96	1 220	19.61	238 02	238 02	10 [illegible]	3 285 62	
7	285 14	31 13	254 01	1 295	21.18	273 63	273 63	19 62	4 331 [illegible]	
9	205 76	-	205 76	596	22.09	132 10	132 10	[illegible]	[illegible]	
11	14 80	-	14 80	175	-	-	-	14 80	1 [illegible]	
12	545 19	-	545 19	3 439	15.84	544 74	454 08	91 [illegible]	[illegible]	1
13	1 306 89	318 24	987 65	5 688	15.80	898 70	898 79	88 [illegible]	1 352 72	1
14	1 213 00	160 30	1 052 70	7 365	15.62	1 150 41	1 064 08	11 38	584 70	
15	574 57	34 43	540 14	3 854	14.73	569 63	574 63	34 49	4 451 21	
16	272 46	7 20	265 26	1 870	22 38	351 37	226 35	39 [illegible]	4 589 58	
17	114 34	13 53	100 81	756	20.33	153 69	131 49	30 68	3 380 76	
18	247 91	1 35	246 56	3 157	8.46	267 08	261 12	14 56	9 945 46	
19	212 19	-	212 19	1 252	16.76	210 09	156 59	[illegible]	[illegible]	
20	139 59	-	139 59	972	17.32	151 03	128 00	11 [illegible]	2 [illegible]	
22	119 10	-	119 10	862	12.61	108 70	108 70	10 40	1 044 34	
25	648 19	-	648 19	3 676	14.07	517 21	486 02	162 [illegible]	[illegible]	
26	491 68	18 65	472 35	2 687	15.28	405 98	403 97	69 [illegible]	879 79	
29	181 82	17 20	164 62	734	20.56	150 91	150 91	13 [illegible]	367 74	
30	219 81	17 63	202 18	533	22.36	119 18	119 18	83 [illegible]	2 859 25	
33	179 06	3 40	175 66	805	20.95	167 84	167 84	[illegible]	441 11	
34	58 77	-	58 77	190	21 20	40 28	40 28	18 [illegible]	2 462 63	
35	5 744 24	150 00	5 594 24	44 036	10.55	4 645 80	4 556 62	1 035 [illegible]	45 54	1
37	32 28	-	32 28	321	22.92	73 57	73 57	41 29	438 86	
42	286 24	26 12	260 12	1 460	18.49	269 95	232 81	27 [illegible]	7 406 58	1
43	13 455 56	2 187 50	11 268 06	140 481	10.61	14 905 03	14 690 36	3 422 31	3 422 31	
44	18 625 55	6 768 00	12 857 55	267 391	8.50	22 708 24	22 512 40	9 654 85	9 564 85	1
46	1 624 32	285 40	1 338 92	7 795	14.53	1 136 51	1 092 89	246 [illegible]	8 247 90	2
48	100 61	16 20	84 41	430	18.78	80 80	80 80	3 61	6 874 05	
51	1 380 66	-	1 380 66	6 942	19.93	1 383 54	1 318 66	61 80	12 575 26	1
52	786 31	-	786 31	4 220	14.96	626 27	638 52	147 79	19 06	
53	166 39	21 60	144 79	733	16.64	121 97	102 86	42 [illegible]	2 681 73	
54	30 218 88	-	30 218 88	591 028	[illegible].04	41 608 [illegible]	41 596 61	11 377 73	3 359 [illegible]	5
55	285 77	4 80	280 97	3 685	11.14	410 51	403 06	122 06	8 525 08	1
58	160 [illegible]	-	160 18	4 524	7.27	357 57	357 97	197 79	8 769 37	
59	17 713 06	598 00	17 115 06	805 441	6.81	13 990 53	13 933 57	3 181 49	1 111 55	3
60	208 13	26 13	182 00	753	21.06	158 81	159 40	22 60	4 184 36	
61	199 98	48 27	151 71	991	21.34	208 51	175 49	[illegible] 70	615 48	
62	449 29	12 00	437 29	3 066	20 01	613 31	613 41	176 13	525 38	
63	5 607 01	334 15	5 272 86	43 330	13.99	6 061 87	4 644 52	628 34	2 419 08	3
65	295 [illegible]	2 15	293 44	2 184	14.92	323 67	246 54	46 90	1 698 55	
66	50 70	-	50 70	283	20 53	58 16	58 16	7 40	1 [illegible]	
67	30 47	-	30 47	580	21.61	125 34	128 05	37 68	1 328 11	
70	495 27	-	495 27	2 507	16.03	492 87	403 93	91 34	1 694 28	
71	378 06	114 00	264 06	1 414	17.58	248 55	227 58	36 48	2 698 37	1
72	11 68	-	11 68	45	22.56	10 15	10 15	1 53	268 69	
73	385 48	-	385 48	4 035	8.80	355 08	363 51	21 97	4 739 11	1
74	81 83		81 83	333	20.14	67 07	67 07	14 76	288 18	
75	357 99	-	357 99	2 487	[illegible].95	272 33	272 33	85 66	620 24	
76	179 10		179 10	1 553	13.99	216 95	238 18	51 [illegible]	1 654 37	
77	248 59	27 00	221 59	1 635	25.02	245 58	244 11	22 52	3 736 97	
78	620 48	-	620 48	3 432	14 05	482 20	482 20	138 29	770 76	
[illegible]	308 05	22 73	285 30	2 273	17.30	256 85	261 78	23 52	918 22	

7	285 14	31 13	254 01	1 298	21.18	273 63	273 63	19 62	4 331 33		
9	205 76	-	205 76	598	22.09	132 10	132 10	72 66	285 79		
11	14 80	-	14 80	175	-	-	-	14 80	1 468 74		
12	545 19	-	545 19	3 439	15.84	544 74	454 08	91 11	11 140 65		
13	1 306 89	318 24	987 65	5 688	15.80	898 70	898 79	88 86	1 352 72		
14	1 213 00	160 30	1 052 70	7 365	15.62	1 180 41	1 064 08	11 38	584 70		
15	574 57	34 43	540 14	3 854	14.73	569 62	574 63	34 49	4 451 21		
16	272 46	7 20	265 26	1 870	22 38	351 37	228 35	39 91	4 589 58		
17	114 34	13 53	100 81	756	20.33	153 69	131 49	30 68	3 380 76		
18	247 91	1 35	246 56	3 157	8.46	267 08	261 12	14 56	9 945 46		
19	213 19	-	212 19	1 282	16.76	210 09	156 89	55 80	1 492 80		
20	139 59	-	139 59	472	17.32	151 03	128 00	11 59	2 810 98		
23	119 10	-	119 10	862	12.61	108 70	108 70	10 40	1 044 34		
25	648 19	-	648 19	3 676	14.07	517 21	486 02	162 17	2 658 55		
26	491 68	18 85	472 35	2 687	15.28	405 99	403 97	69 01	879 79		
29	181 82	17 20	164 62	734	20.56	150 91	150 91	13 71	357 74		
30	219 81	17 63	202 18	533	22.36	119 18	119 18	83 00	2 859 25		
33	179 06	3 40	175 66	805	20.95	167 84	167 84	7 66	441 11		
34	58 77	-	58 77	190	21 20	40 28	40 28	18 49	2 462 63		
35	5 744 24	150 00	5 594 24	44 036	10.55	4 645 80	4 556 62	1 035 56	45 54		1
37	32 28	-	32 28	321	22.92	73 57	73 57	41 29	438 86		
42	286 24	26 12	260 12	1 460	18.49	269 96	232 81	27 84	7 406 58		1
43	13 485 55	2 187 50	11 298 05	140 481	10.61	14 905 03	14 690 36	3 422 31	3 422 31		
44	13 625 55	6 768 00	12 857 55	267 391	8.50	22 726 24	22 512 40	9 654 85	9 564 85		1
46	1 624 32	285 40	1 338 92	7 795	14.54	1 136 51	1 092 89	346 50	8 247 90		2
48	100 61	16 20	84 41	430	18.79	80 80	90 80	8 61	6 874 05		
51	1 380 66	-	1 380 66	6 942	19.93	1 383 54	1 318 66	61 80	12 876 26		1
52	786 31	-	786 31	4 220	14.96	826 27	638 52	147 79	29 06		
53	166 39	21 60	145 29	733	16.64	121 97	102 86	48 40	2 681 73		
54	30 218 86	-	30 218 98	591 028	7.04	41 608 37	41 596 61	11 377 73	3 359 54		5
55	285 77	4 80	280 97	3 685	11.14	410 51	403 06	122 06	5 525 08		1
58	180 18	-	180 18	4 524	7.27	357 57	357 97	197 79	5 769 37		
59	17 713 06	598 00	17 115 06	305 441	6.81	13 990 53	13 933 57	3 181 45	1 111 55		3
60	208 13	26 13	182 00	753	21.09	158 81	159 40	22 80	4 184 36		
61	199 98	45 27	154 71	991	21.04	208 51	175 49	20 70	615 45		
62	449 29	12 00	437 29	3 065	20 01	613 31	613 41	176 13	625 38		
63	5 607 01	334 16	5 272 86	43 330	13.93	6 061 87	4 644 52	628 34	2 419 08		3
65	298 33	2 15	293 44	2 184	14.92	323 67	246 54	46 90	1 698 55		
66	50 70	-	50 70	283	20 53	58 16	58 16	7 40	1 021 31		
67	30 47	-	30 47	590	21.61	135 34	128 05	37 88	1 328 11		
70	495 27	-	495 27	2 507	18.03	402 87	403 93	91 34	1 694 28		
71	378 06	114 00	264 06	1 414	17.68	248 59	227 58	36 48	2 698 37		1
72	11 68	-	11 68	45	22.56	10 15	10 15	1 53	268 69		
73	385 48	-	385 48	4 035	8.80	355 08	363 51	21 97	4 739 11		1
74	81 83		81 83	333	20.14	67 07	67 07	14 76	238 15		
75	387 09	-	387 09	2 487	15.82	272 33	272 33	85 66	820 24		
76	179 10		179 10	1 553	13.99	216 96	238 18	53 30	1 654 87		
77	248 59	27 00	221 59	1 635	15.02	245 58	244 11	22 52	3 736 97		
78	620 48	-	620 48	3 432	14 05	482 20	482 20	138 28	770 76		
79	308 03	22 73	285 30	2 273	17.30	256 85	261 78	23 52	918 22		
82	475 96	26 00	439 96	2 007	16 19	324 93	331 48	108 48	1 976 80		1
83	610 79	17 56	593 23	2 380	16 89	397 22	331 86	264 37	22 273 40		1
84	7 161 92	217 98	6 944 01	150 283	6.49	9 753 37	8 560 97	1 616 03	4 543 81		1
87	7 214 64	3 013 20	4 201 44	96 975	6.83	6 623 39	6 727 98	2 526 54	2 064 46		
88	-	-			-	-		-	468 50		
TOTAL 58	$145 496 81	$ 20 738 77	$124 758 04	1 896 608	7.78	$ 152 878 48	$ 149 063 55	$ 24 305 51	$ 115 253 57	$	
10	10 096 36	-	10 096 36	94 843	7.76	7 378 79	7 351 88	2 744 48	$ 22 782 79	$	
36	6 110 84	-	6 110 84	36 575	7.78	3 845 54	2 880 34	3 230 50	14 346 02		
GRAND TOTAL	$161 704 32	$ 20 738 77	$140 965 24	2 028 026		$ 163 102 81	159 295 77	$ 18 330 53	$ 78 125 09	$	

(*) Average of all other firms

(1) Includes revenue from Seconds at prevailing [illegible] from Buying service at [illegible] prevail[illegible] rate prices in price of 6-14. [illegible] rate levels in Column E.

B. A. I. DOCKET NO. 34/. ORDER OF JUNE 14, 1935

STATEMENT NO. 2
Sheet 2 of 2

EFFECT OF THE PRESCRIBED RATES BY SPECIES, SHOWING NET AMOUNTS AVAILABLE TO COMPENSATE OWNERS FOR SERVICES, ON BASIS OF the property [illegible] by applying [illegible] individual [illegible] June 14, 1934

JUNE 14,1933 RATES		NET YIELD AVAILABLE FOR RETURN ON INV & COMPENSATION OF OWNER	NET YIELD AVAILABLE FOR RETURN ON INV & COMPENSATION OF OWNER	ALL Less Return on Investment allowed in Order of 6/14/1933	ALL Remainder, if any, available to compensate owners for personal services	CASES Average number of owners during the year 1921	CASES Average compensation, if any, per owner per annum
Key Nr	Less Increased Revenue on basing service						
	b	i	j	k	l	m	n
108	$ 2 873 33	$ 715 02	$ 716 02	$ 173 10	$ 842 92	1	$ 842 92
94	150 12	76 [illegible]		610 89	-	2	-
57	13 883 93	1 193 12	1 193 12	836 33	356 79	1	356 79
02	238 02	13 [illegible]	3 288 [illegible]	299 68	2 985 94	2	1 492 97
62	273 63	19 62	4 331 [illegible]	520 66	3 801 67	2	1 900 84
10	132 10	72 [illegible]		182 45	-	1	-
[illegible]	[illegible]	14 [illegible]	[illegible]	42 80	-	1	-
74	454 08	91 [illegible]	[illegible]	1 229 86	-	-	-
70	898 79	88 [illegible]	1 352 72	1 267 60	85 12	3	28 37
41	1 064 08	11 38	884 [illegible]	856 57	-	3	-
82	574 63	34 49	4 451 21	365 26	4 065 95	2	2 032 98
87	228 35	39 91	4 589 58	465 87	4 823 71	3	1 607 90
69	131 49	30 68	3 380 76	221 16	3 159 60	2	1 579 80
08	281 12	14 86	9 945 46	960 81	9 954 65	4	2 241 16
09	166 89	[illegible]	[illegible]	228 04	-	1	-
03	128 00	11 [illegible]	[illegible]	814 36	-	1	-
70	108 70	10 [illegible]	1 044 34	538 33	506 01	1	506 01
21	486 02	162 [illegible]	[illegible]	948 79	-	2	-
98	403 97	69 [illegible]	879 79	607 99	271 80	2	135 90
91	150 91	15 [illegible]	567 74	474 98	62 76	3	27 69
18	919 18	85 [illegible]	2 859 25	376 09	2 421 16	2	1 240 58
84	167 84	7 [illegible]	441 11	37 23	403 88	1	403 88
28	40 28	18 [illegible]	2 462 63	696 31	1 564 32	1	1 564 32
80	4 556 62	1 035 [illegible]	45 54	1 185 13	-	10	-
57	73 57	41 29	438 86	33 36	402 50	1	402 50
36	232 81	27 [illegible]	7 406 58	1 098 39	6 308 19	3	2 102 73
03	14 690 36	3 422 31	3 422 31	561 92	2 860 39	1	2 860 39
24	20 512 40	9 864 85	9 564 85	1 069 86	8 495 29	2	4 247 65
51	1 092 89	246 [illegible]	8 247 90	2 628 98	5 620 92	5	1 124 18
80	80 80	3 61	6 874 05	678 76	6 195 29	3	2 065 10
54	1 318 86	81 80	12 876 26	1 479 46	11 096 78	1	11 096 78
27	638 52	147 79	19 06	336 12	-	2	-
97	102 86	48 [illegible]	2 681 73	517 65	2 164 08	2	1 082 04
32	41 596 61	11 377 73	3 359 54	5 308 63	-	3	-
51	403 06	122 06	8 825 08	1 080 02	4 445 06	2	2 222 53
57	357 97	197 79	8 769 87	867 91	5 181 66	2	2 590 78
63	13 933 87	3 181 49	1 111 58	3 786 [illegible]	-	4	-
81	159 40	[illegible] 90	4 184 36	439 25	3 745 13	6	624 19
51	175 49	[illegible] 70	615 48	232 67	382 78	1	382 78
31	613 41	176 13	625 36	596 01	-	2	-
87	4 644 52	628 34	2 416 08	3 159 28	-	7	-
67	246 54	46 90	1 698 55	666 62	-	2	-
16	58 16	7 40	1 021 31	61 13	870 18	1	870 18
34	128 05	27 88	1 328 11	51 23	1 276 88	1	1 276 88
87	403 93	91 34	1 694 26	859 94	-	1	-
55	227 58	35 48	2 698 37	1 078 49	-	5	-
15	10 15	1 53	268 69	43 68	225 01	1	225 01
08	363 31	21 97	4 739 11	1 432 30	-	4	-
07	67 07	14 75	238 19	149 13	-	1	-
33	272 33	85 66	620 24	422 58	-	1	-
96	238 18	51 [illegible]	1 654 87	210 90	1 443 47	1	1 443 47
58	244 11	22 52	3 736 97	429 22	3 307 75	3	1 182 58
20	482 20	159 28	770 76	209 19	-	1	-
	[illegible]	23 82	915 22	200 27	714 95	1	714 95
					[illegible]	[illegible]	20 22

	238 02		3 285 62	299 68	2 985 94	2	1 492 97
273 62	273 63	19 62	4 331 33	520 66	3 801 67	2	1 900 84
132 10	132 10			182 48	-	1	-
-	-		1 468 94	42 80	-	1	-
894 74	454 08			1 229 86	-	-	-
898 70	898 79		1 352 72	1 267 60	85 12	3	28 37
180 41	1 064 08	11 38	584 70	856 57	-	3	-
569 62	574 63	34 49	4 451 21	365 86	4 065 85	2	2 032 93
361 37	228 35		4 589 58	465 87	4 823 71	3	1 507 90
383 69	131 49		3 380 76	221 16	3 159 60	2	1 579 80
267 08	261 12		9 945 46	980 81	9 964 65	4	2 241 16
210 09	166 89			228 04	-	1	-
161 03	128 00			814 36	-	1	-
108 70	108 70		1 044 34	538 33	506 01	1	506 01
817 21	486 02			948 79	-	2	-
405 98	403 97		879 79	607 99	271 80	2	138 90
150 91	150 91		557 74	474 98	82 76	3	27 69
119 18	919 18		2 859 25	378 09	2 481 16	2	1 240 58
147 84	147 84		441 11	37 23	403 88	1	403 88
40 28	40 28		2 462 63	898 31	1 564 32	1	1 564 32
845 80	4 556 62		45 54	1 185 13	-	10	-
73 57	73 57		438 86	33 36	402 50	1	402 50
269 95	232 81		7 406 58	1 098 39	6 308 19	3	2 102 73
905 03	14 690 36		3 422 31	561 92	2 860 39	1	2 860 39
728 24	22 512 40		9 564 85	1 069 66	8 495 29	2	4 247 65
136 51	1 092 89		8 247 90	2 628 98	5 620 92	5	1 124 18
80 80	80 80		6 874 05	678 76	6 195 29	3	2 065 10
983 54	1 318 86		12 576 26	1 479 46	11 096 78	1	11 096 78
546 27	638 52		19 08	386 12	-	2	-
122 97	102 86		2 681 73	517 65	2 164 08	2	1 082 04
508 37	41 596 61		3 359 54	5 308 63	-	3	-
410 51	403 06		5 525 08	1 080 02	4 445 06	2	2 222 53
387 57	357 97		6 769 37	587 91	5 181 46	2	2 590 73
930 53	13 933 57		1 111 55	3 788 54	-	4	-
186 81	159 40		4 184 36	439 25	3 745 13	6	624 19
303 51	175 49		615 45	232 67	382 78	1	382 78
513 31	613 41		625 38	596 01	-	2	-
161 87	4 644 52		2 419 08	3 159 28	-	7	-
129 67	246 54		1 698 55	666 62	-	2	-
86 16	58 16		1 031 31	61 13	970 18	1	970 13
133 34	128 05		1 328 11	51 23	1 276 88	1	1 276 88
401 87	403 93		1 694 28	689 94	-	1	-
248 59	227 58		2 698 37	1 078 49	-	5	-
10 15	10 15		268 69	43 68	225 01	1	225 01
155 08	363 31		4 739 11	1 432 30	-	4	-
67 07	67 07		238 18	149 13	-	1	-
224 33	272 33		620 24	422 58	-	1	-
216 95	238 18		1 654 37	210 90	1 443 47	1	1 443 47
145 58	244 11	22 52	3 736 97	429 22	3 307 75	3	1 182 58
158 20	482 20	138 28	770 76	209 19	-	1	-
155 85	261 78	23 52	915 22	200 27	714 95	1	714 95
129 93	331 48	108 48	1 976 80	1 875 71	101 09	5	20 22
147 22	331 86	261 37	22 273 40	1 869 68	20 403 72	5	4 080 74
155 37	8 560 87	1 616 03	4 543 81	1 698 88	2 844 93	3	948 31
159 39	6 727 98	2 526 54	2 064 46	405 56	1 648 90	1	1 648 90
	-	-	468 56	45 20	-	-	-
178 48	$ 149 063 55	$ 24 305 51	$ 115 253 57	$ 49 073 64	---- -	136	$ 486 62
							-
179 79	7 351 88	2 744 48	$ 22 782 76	$ 2 848 65			-
145 54	2 880 34	3 230 50	14 346 02	2 472 53			
107 81	159 295 77	$ 18 330 53	$ 78 125 09	$ 54 394 81		136	$ 174 50

Equiv $1 33 per man per day

Equiv $0 48 per man per day

9 FIRMS HANDLING 42% OF 1931 VOLUME (EQUIVALENT CAR

NET RETURNS TO OWNERS UNDER RATES OF JUNE 1933
BASED ON REVENUE TEST USING 1931 VOLUME AND COSTS OF
SELLING & BUYING SERVICE
ALL SPECIES

Item	BASED ON COSTS AS ALLEGED BY AGENCIES					
	No. of Head Selling & Buying	Gross Revenue Earnings	All Oth. Costs exclusive of owners Compensation and Ret. on Investment	Owners' Net Income or Deficit	No. of Owners	Av. Ret. Per Owner Per Year
	b	c	d	e	f	g
A UNDER TARIFF #3 RATES IN EFFECT IN 1931						
Cattle and Calves	1 038 164	$ 569 463 31	$431 890 96	$137 572 35		
Hogs	521 722	116 683 64	112 899 17	3 784 47		
Sheep	1 013 241	85 663 48	60 008 13	25 655 35		
Total all species		$ 771 810 43	$604 798 26	$167 012 17	37	$4 513
B UNDER TARIFF #3 PRESENTLY EFFECTIVE						
Cattle and Calves	1 038 164	$ 536 808 74	$431 890 96	$104 917 79		
Hogs	521 722	96 641 68	112 899 17	16 257 49		-
Sheep	1 013 241	76 803 48	60 008 13	16 795 35		-
Total all species		$ 710 253 90	$604 798 26	$105 455 64	37	$2 850
C UNDER RATES PRESCRIBED IN SECRETARY'S ORDER JUNE 1933 (Based on yield resulting from application to 1931 selling volume)						
Cattle and Calves	1 038 164	$ 788 203 81	$431 890 96	$ 41 524 12		
Hogs	521 722	148 219 41	112 899 17	10 390 79		
Sheep	1 013 241	81 284 53	60 008 13	12 365 24		
Total all species		$1 017 707 75	$604 798 26	$ 43 298 57	37	$1 170

ING 42% OF 1931 VOLUME (EQUIVALENT CARLOT BASIS)

ES TO OBTAIN UNDER RATES OF JUNE 1933 ORDER
UR TEST USING 1931 VOLUME AND COSTS OF THAT YEAR
SELLING & BUYING SERVICE
ALL SPECIES

PETITIONERS' EXHIBIT NO. 50
WITNESS: Roberts, J. W. 2/27/34

ALLEGED BY AGENCIES				BASED ON COSTS AS ALLEGED BY GOVERNMENT ACCOUNTANT					
...ent	Owners' Net Income or Deficit	No. of Owners	Avg. Return Per Owner Per Year	No. of Head Selling & Buying	Gross Revenue Earnings	All Cor. Costs exclusive of owners' Compensation and Ret. on Investment	Owners' Net Income or Deficit	No. of Owners	Avg. Return Per Owner Per Year
	e	f	g	h	i	j	k	l	m
	$137 572 36		-	1 038 164	$ 569 463 31	$ 444 592 52	$ 124 870 79		-
	3 784 47	-	-	521 722	116 683 64	94 766 87	21 916 77	-	-
	25 655 35	-	-	1 013 241	85 663 48	63 689 09	21 974 39	-	-
	$167 012 17	37	$4 513 84		$ 771 810 43	$ 603 048 48	$ 168 761 95	37	$4 561 13
	$104 917 79			1 038 164	$ 536 808 74	$ 444 592 52	$ 92 216 22	-	-
	16 257 49		-	521 722	96 641 68	94 766 87	1 874 81	-	-
	16 795 35		-	1 013 241	76 803 48	63 689 09	13 114 39	-	-
	$105 455 64	37	$2 850 15		$ 710 253 90	$ 603 048 48	$ 107 205 42	37	$2 897 44
	$ 41 524 12			1 038 164	$ 788 203 81	$ 444 592 52	$ 28 822 55	-	-
	10 390 79			521 722	148 219 41	94 766 87	7 741 51	-	-
	12 365 24			1 013 241	91 284 53	63 689 09	3 484 28	-	-
	$ 43 298 57	37	$1 170 25		$ 1 017 707 75	$ 603 048 48	$ 45 049 35	37	$1217.57

21 FIRMS HANDLING 72.5% OF 1931 VOLUME (EQUIVALENT CAR

NET RETURNS TO OWNERS UNDER RATES OF JUNE 1933 C
BASED ON REVENUE TEST USING 1931 VOLUME AND COSTS OF
SELLING AND BUYING SERVICE
ALL SPECIES

Item	BASED ON COSTS AS ALLEGED BY AGENCIES					
	No. of Head Selling & Buying	Gross Revenue Earnings	All Opr. Costs exclusive of owners' Compensation and Ret. on Investment	Owners' Net Income or Deficit	No. of Owners	Ave. Ret. Per Owner Per Year
a	b	c	d	e	f	g
A UNDER TARIFF & RATES IN EFFECT IN 1931					-	-
Cattle and Calves	1 710 421	$ 950 897 85	$675 030 55	$275 857 30		-
Hogs	750 244	171 614 37	183 033 22	11 418 85		-
Sheep	1 090 268	97 078 44	69 299 62	27 778 82		-
Total all species	-	$1 219 590 66	$927 363 39	$292 227 27	74	$3 949
B UNDER TARIFF #3 PRESENTLY EFFECTIVE						
Cattle and Calves	1 710 421	$ 890 223 32	$675 030 55	$215 192 77	-	-
Hogs	750 244	139 690 98	183 033 22	43 34[illegible]	-	-
Sheep	1 090 288	86 962 68	69 299 62	17 663 06	-	-
Total all species	-	$ 921 976 58	$927 363 39	$189 513 46	74	$2 561
C UNDER RATES PRESCRIBED IN SECRETARY'S ORDER JUNE 1933. (Based on yield resulting from application to 1931 selling volume)						
Cattle and Calves	1 710 421	$ 788 203 81	$675 030 55	$113 173 26	-	-
Hogs	750 244	148 219 41	183 033 22	34 813 81	-	-
Sheep	1 090 288	81 284 53	69 299 62	11 984 91	-	
Total all species	-	$1 017 707 75	$927 363 39	$ 90 344 38	74	$1 220

72.5% OF 1931 VOLUME (EQUIVALENT CARLOT BASIS)

PETITIONERS' EXHIBIT NO. 6
WITNESS:- Roberts, J. W.

TO OWNERS UNDER RATES OF JUNE 1933 ORDER
TEST USING 1931 VOLUME AND COSTS OF THAT YEAR
SELLING AND BUYING SERVICE
ALL SPECIES

...GED BY AGENCIES			BASED ON COSTS AS ALLEGED BY GOVERNMENT ACCOUNTANT					
Owners' Net Income or Deficit	No. of Owners	Avg. Return Per Owner Per Year	No. of Head Selling & Buying	Gross Revenue Earnings	All Our. Costs exclusive of owners' Compensation and Ret. on Investment	Owners' Net Income or Deficit	No. of Owners	Avg. Return Per Owner Per Year
e	f	g	h	i	j	k	l	m
	-	-						
)275 857 30		-	1 710 421	$ 950 897 85	$ 729 910 25	$220 987 60	-	-
11 418 85		-	750 344	171 614 37	151 436 92	20 177 45	-	-
27 778 82		-	1 090 288	97 078 44	74 207 22	22 871 22	-	-
$292 227 27	74	$3 949 03	-	$1 219 590 66	$ 955 554 39	$264 036 27	74	$3 568 06
$215 192 77	-	-	1 710 421	$ 890 223 32	$ 729 910 25	$160 313 07	-	-
43 34 34	-	-	750 344	139 690 89	151 436 92	11 746 04	-	-
17 663 06	-	-	1 090 288	86 962 68	74 207 22	12 755 46	-	-
$189 513 45	74	$2 561 06		$ 921 976 53	$ 955 554 39	$161 322 49	74	$2 180 03
$115 173 26	-	-	1 710 421	$ 758 203 81	$ 729 910 25	$ 58 293 56	-	-
34 813 81	-	-	750 344	148 219 41	151 436 92	3 217 51	-	-
11 984 91	-	-	1 090 288	81 284 53	74 207 22	7 077 31	-	-
$ 90 344 36	74	$1 220 87		$1 017 707 75	$ 955 554 39	$ 62 153 36	74	$ 839 91

COMPARISON OF SO-CALLED "REASONABLE" UNIT-COSTS PER HEAD OF JUNE 14, 1933 AND TOTAL COSTS

AS FOUND BY GOVERNMENT ACCOUNTANTS AND AS CLAIMED BY RESPONDENTS (59 AGENCIES)

FOR THE TEST YEAR 1931

Cost Factors allowed as described at page 79 of June 1933 Order	Selling & Buying No. of Head 59 firms	ALLOWANCES PER ORDER JUNE 1933 "Standard" Rate per head Order page 79	Amount	TOTAL COSTS AS CLAIMED By Government Buchmann Exhibits	By Agencies	ORDER'S ALLOWANCES IN EXCESS (Excesses in RED) Of Govt Costs	Of Agcy
a	b		d	e	f	g	h
CATTLE & CALVES							
Salesmanship & Buying	2 284 207	$0.1379	$ 314 992 18	$ 355 758 61	$ 410 181 43	$ 40 766 46	$ 95 189
Yarding Salaries		0.0750	171 315 53	221 737 54	236 053 76	50 422 01	64 738
Yarding Expenses (Inc. SAB Exp.)		.0140	31 978 90	34 759 61	29 349 00	2 819 29	2 629
Office Salaries		.0585	119 920 87	136 767 01	126 232 46	16 846 14	6 311
Office Expenses		.0300	68 526 61	71 533 10	74 004 24	3 006 49	5 477
Business Getting & Maintenance		.0450	102 789 32	326 303 91	296 248 94	223 514 59	193 459
Administration & Genl Expenses		.0332	75 878 83	75 366 43	81 373 82	12 48	5 994
Insurance (Risk Expense)		.0070	15 989 45	30 433 98	24 010 06	14 444 53	8 020
Return on Investment		.0150	34 263 11	26 720 01*	44 452 54	7 533 40	10 189
Total "Costs"		.4094	$ 935 184 77	$1 269 390 20	$1 321 916 25	$334 235 43	$388 769
Profit - Management		0350	79 947 25	84 082 62	88 160 47	25 164 62	8 213
Uninsurable Risks		.0036	7 994 72	-	-	7 994 72	7 994
TOTAL COST + PROFIT		.4479	$1 023 096 74	$1 323 472 82	$1 408 076 72	$300 376 08	$384 979
HOGS							
Salesmanship & Buying	1 045 048	$0.0343	$ 36 880 19	$ 58 470 89	$ 63 647 69	$ 21 580 70	$ 26 654
Yarding Salaries		.0290	31 351 44	62 975 60	68 297 42	31 624 16	35 946
Yarding Expenses (Inc. SAB Exp.)		.0060	6 270 29	426 76	2 247 48	5 844 53	4 022
Office Salaries		.0290	31 351 44	36 958 26	41 332 72	5 606 82	9 981
Office Expenses		.0175	18 288 34	19 426 59	26 110 38	1 138 25	7 821
Business Getting & Mtce		.0180	18 810 86	52 043 84	101 008 13	33 232 68	82 197
Adm & Genl Expenses		.0200	20 900 96	18 800 21	19 940 86	2 100 75	1 960
Insurance (Risk Expense)		.0025	2 612 62	6 808 06	4 971 47	2 895 44	2 358
Return on Investment		.0070	7 315 34	8 707 31*	10 444 59	1 608 03	3 129
Total "Costs"		.1663	$ 173 791 48	$ 280 318 22	$ 334 200 78	$ 86 534 74	$160 409
Profit - Management		.0133	13 899 14	9 121 51	10 777 10	4 777 63	8 877
Uninsurable Risks		.0014	1 463 07	-	-	1 463 07	1 463
TOTAL COSTS + PROFIT		.1810	$ 189 153 69	$ 289 437 73	$ 353 977 88	$ 80 284 04	$164 824
SHEEP							
Salesmanship & Buying	1 896 808	$0.0140	$ 26 553 51	$ 34 842 45	$ 35 223 47	$ 8 289 94	$ 8 670
Yarding Salaries		.0080	15 173 86	14 785 66	15 471 40	407 80	297
Yarding Expenses (Inc. SAB Exp.)		.0004	758 64	83 08	8 673 98	675 56	7 915
Office Salaries		.0100	18 966 08	16 601 47	19 715 03	2 364 61	748
Office Expenses		.0050	9 483 04	8 850 50	9 856 62	632 54	373
Business Getting & Mtce		.0058	11 180 99	48 522 74	53 896 19	38 332 75	42 715
Adm & Genl Expenses		.0050	9 483 04	9 125 72	8 512 70	357 32	970
Insurance (Risk Expense)		.0015	2 466 59	5 044 35	3 321 73	2 577 76	854
Return on Investment		.0040	7 586 43	5 918 27*	4 822 06	1 668 16	2 764
Total "Costs"		.0636	$ 101 656 18	$ 144 754 14	$ 157 592 18	$ 43 098 96	$ 55 936
Profit - Management		.0040	7 586 43	6 680 94	9 938 78	905 49	2 352
Uninsurable Risks		.0004	758 64	-	-	758 64	758
TOTAL COSTS + PROFIT		.0680	$ 110 003 25	$ 151 415 08	$ 167 530 96	$ 41 411 83	$ 57 527
ALL SPECIES							
Salesmanship & Buying		-	$ 370 426 68	$ 449 071 95	$ 507 052 59	$ 78 627 10	$136 625
Yarding Salaries		-	217 826 53	299 478 80	316 852 58	81 652 27	99 026
Yarding Expenses (Inc. SAB Exp.)		-	39 007 83	35 268 45	40 370 43	13 739 38	1 362
Office Salaries		-	170 239 39	180 326 74	187 280 21	10 088 35	17 040
Office Expenses		-	96 297 99	97 810 19	109 971 24	1 512 20	13 673

Salesmanship & Buying	2 284 207	$0.1379	$ 314 992 15	$ 355 758 61	$ 410 161 43	$ 40 766 46	$ 95 169 28
Yarding Salaries		0.0750	171 315 53	221 737 54	236 043 76	50 422 01	64 728 23
Yarding Expenses (Inc. SAB Exp.)		.0140	31 978 90	24 759 61	29 349 00	[illegible]	[illegible]
Office Salaries		.0525	119 920 87	136 767 01	126 232 46	16 846 14	6 311 59
Office Expenses		.0300	68 526 61	71 533 10	74 004 24	3 006 49	5 477 63
Business Getting & Maintenance		.0450	102 789 32	326 303 91	296 248 94	223 514 59	193 459 62
Administration & Gen'l Expenses		.0330	75 378 83	75 366 43	81 373 82	[illegible]	5 994 99
Insurance (Risk Expense)		.0070	15 989 45	30 433 98	24 010 06	14 444 53	8 020 61
Return on Investment		.0150	34 263 11	26 730 01*	44 452 54	[illegible]	10 189 43
Total "Costs"		.4094	$ 935 154 77	$1 269 390 20	$1 321 916 25	$334 235 43	$386 761 48
Profit - Management		.0350	79 947 25	54 082 62	86 160 47	[illegible]	6 213 22
Uninsurable Risks		.0035	7 994 72	-	-	[illegible]	7 994 72
TOTAL COST + PROFIT		.4479	$1 023 096 74	$1 323 472 82	$1 408 076 72	$300 376 08	$384 979 98
HOGS							
Salesmanship & Buying	1 045 048	$0.0343	$ 36 890 19	$ 58 470 89	$ 63 547 69	$ 21 580 70	$ 26 657 50
Yarding Salaries		.0300	31 351 44	62 975 60	65 297 42	31 624 18	33 945 98
Yarding Expenses (Inc. SAB Exp.)		.0060	6 270 29	425 76	2 247 48	[illegible]	[illegible]
Office Salaries		.0300	31 351 44	36 958 26	41 332 72	5 606 82	9 981 28
Office Expenses		.0175	18 288 34	19 426 59	26 110 38	1 138 35	7 822 04
Business Getting & Mtce		.0180	18 810 86	82 043 54	101 008 13	33 232 68	82 197 27
Adm & Genl Expenses		.0200	20 900 96	18 800 31	19 240 86	[illegible]	1 660 10
Insurance (Risk Expense)		.0025	2 612 62	5 808 06	4 971 47	2 895 44	2 358 85
Return on Investment		.0070	7 315 34	5 707 31*	10 444 59	[illegible]	3 129 28
Total "Costs"		.1653	$ 173 791 48	$ 260 316 22	$ 334 200 75	$ 86 524 74	$160 409 27
Profit - Management		.0133	13 899 14	9 121 51	19 777 10	[illegible]	5 877 96
Uninsurable Risks		.0014	1 463 07	-	-	[illegible]	1 463 07
TOTAL COSTS + PROFIT		.1810	$ 189 153 69	$ 269 437 73	$ 353 977 85	$ 90 284 04	$164 824 16
SHEEP							
Salesmanship & Buying	1 896 608	$0.0140	$ 26 552 51	$ 34 843 45	$ 35 323 47	$ 8 289 94	$ 8 770 96
Yarding Salaries		.0080	15 172 86	14 765 66	15 471 40	[illegible]	298 54
Yarding Expenses (Inc. SAB Exp.)		.0004	758 64	83 08	8 675 98	[illegible]	7 916 34
Office Salaries		.0100	18 966 08	16 601 47	19 715 03	[illegible]	748 95
Office Expenses		.0080	9 483 04	8 850 80	9 856 62	[illegible]	373 58
Business Getting & Mtce		.0059	11 189 99	49 522 74	53 896 19	38 332 75	42 695 20
Adm & Genl Expenses		.0050	9 483 04	9 126 72	8 512 70	[illegible]	970 34
Insurance (Risk Expense)		.0015	2 465 59	5 044 25	3 331 73	[illegible]	866 14
Return on Investment		.0040	7 586 43	5 918 27*	4 822 08	[illegible]	2 764 35
Total "Costs"		.0536	$ 101 658 18	$ 144 754 14	$ 157 592 15	$ 43 [illegible] 96	$ 55 933 97
Profit - Management		.0040	7 586 43	6 660 94	9 228 78	935 49	2 342 35
Uninsurable Risks		.0004	758 64	-	-	[illegible]	[illegible]
TOTAL COSTS + PROFIT		.0580	$ 110 003 26	$ 151 415 08	$ 167 520 93	$ 41 411 83	$ 57 517 68
ALL SPECIES							
Salesmanship & Buying		-	$ 378 434 85	$ 449 071 95	$ 507 032 59	$ 70 637 10	$128 597 74
Yarding Salaries		-	217 838 83	299 478 80	316 852 58	81 638 97	99 012 75
Yarding Expenses (Inc. SAB Exp.)		-	39 007 83	25 268 45	40 270 42	[illegible]	1 262 59
Office Salaries		-	170 238 39	190 326 74	187 280 21	20 088 35	17 041 82
Office Expenses		-	96 297 99	99 810 19	109 971 24	3 513 20	13 673 25
Business Getting & Mtce		-	132 790 17	427 870 19	451 142 26	295 080 02	318 352 09
Adm & Genl Expenses		-	105 762 83	103 292 36	109 127 38	2 470 47	3 364 55
Insurance (Risk Expense)		-	21 067 66	40 986 29	32 313 26	19 918 63	11 245 60
Return on Investment		-	49 164 88	38 355 59*	59 719 20	[illegible]	10 554 32
Total "Costs"		-	$1 210 604 43	$1 674 460 56	$1 813 709 15	$463 856 13	$603 104 72
Profit - Management		-	101 432 82	69 365 07	115 865 34	[illegible]	14 433 52
Uninsurable Risks		-	10 216 43	-	-	[illegible]	[illegible]
TOTAL COSTS + PROFIT		-	$1 322 253 69	$1 743 825 63	$1 929 575 50	$422 071 95	$607 321 82
PERCENT DEFICIENCY OF ORDER'S ALLOWANCE						24.2%	31 4%

* Not included in Bachman's total costs but reported for all species as $30 355 59 - Spread to species on basis of Order's allowance
69.6% - 14.8% 15 43%

PETITIONERS' EXHIBIT NO ...7...
WITNESS: Roberts, J. S.

OF SO-CALLED "REASONABLE" UNIT-COSTS PER ORDER OF JUNE 14, 1933 AND TOTAL COSTS

UND BY GOVERNMENT ACCOUNTANTS AND AS CLAIMED BY RESPONDENTS (59 AGENCIES)

59 Agencies

FOR THE TEST YEAR 1931

Buying Head	ALLOWANCES PER "Standard" Rate per head Order page 9	ORDER JUNE 1933 Amount	TOTAL COSTS AS CLAIMED By Government Bachmann Exhibits	By Agencies	ORDER'S ALLOWANCES IN EXCESS (Excesses in RED) Of Govt Costs	Of Agcy Costs
		d	e	f	g.	h
207	$0.1379	* $ 314 992 15	$ 355 758 61	$ 410 181 43	$ 40 766 46	$ 95 189 28
	0.0750	171 315 53	221 737 54	236 053 76	50 422 01	64 738 23
	.0140	31 978 90	34 759 61	29 349 00		
	.0525	119 920 87	136 767 01	126 232 46	16 846 14	6 311 59
	.0300	68 526 61	71 533 10	74 004 24	3 006 49	5 477 63
	.0450	102 789 32	326 303 91	296 248 94	223 514 59	193 459 62
	.0330	75 378 83	75 366 43	81 373 82	[illegible]	5 994 99
	.0070	15 989 45	30 433 98	24 010 06	14 444 53	8 020 61
	.0150	34 263 11	26 730 01*	44 452 54	[illegible]	10 189 43
	.4094	$ 935 154 77	$1 269 390 20	$1 321 916 25	$334 235 43	$386 761 48
	0350	79 947 25	54 082 62	86 160 47	[illegible]	6 213 22
	.0035	7 994 72	-	-	[illegible]	[illegible] 72
	.4479	$1 023 096 74	$1 323 472 82	$1 408 076 72	$300 376 08	$384 979 98
048	$0.0343	$ 36 890 19	$ 58 470 89	$ 63 547 89	$ 21 580 70	$ 26 657 80
	.0300	31 351 44	62 975 60	65 297 42	31 624 16	33 945 98
	.0060	6 270 29	425 76	2 347 49	[illegible]	[illegible]
	.0300	31 351 44	36 958 26	41 332 72	5 606 82	9 981 28
	.0175	18 288 34	19 426 59	26 110 38	1 138 25	7 822 04
	.0180	18 810 86	52 043 54	101 008 13	33 232 68	82 197 27
	.0200	20 900 96	18 800 31	19 240 86	[illegible]	[illegible]
	.0025	2 612 62	5 808 06	4 971 47	2 895 44	2 358 85
	.0070	7 315 34	5 707 31*	10 444 58	[illegible]	3 129 26
	.1663	$ 173 791 48	$ 280 316 22	$ 334 200 75	$ 86 534 74	$160 409 27
	.0133	13 899 14	9 121 51	19 777 10	[illegible]	5 877 96
	.0014	1 463 07	-	-	[illegible]	[illegible] 07
	.1810	$ 189 153 69	$ 289 437 73	$ 353 977 85	$ 80 284 04	$164 824 16
604	$0.0140	$ 26 552 51	$ 34 842 45	$ 33 323 47	$ 8 289 94	$ 6 770 96
	.0080	15 172 86	14 785 66	15 471 40	407 20	294 54
	.0004	758 64	83 08	8 675 93	675 56	7 916 29
	.0100	18 966 08	16 601 47	19 718 03	2 364 67	748 95
	.0050	9 483 04	8 850 80	9 856 62	633 54	373 58
	.0059	11 189 99	49 522 74	53 896 19	38 332 75	42 695 20
	.0050	9 483 04	9 126 72	8 512 70	357 32	970 34
	.0015	2 466 59	5 044 25	3 331 73	2 578 66	866 14
	.0040	7 586 43	5 918 27*	4 822 05	1 668 16	2 764 38
	.0536	$ 101 658 18	$ 144 784 14	$ 157 592 15	$ 43 [illegible] 96	$ 55 933 97
	.0040	7 586 43	6 660 94	9 928 78	935 49	3 342 35
	.0004	758 64	-	-	758 64	758 64
	.0580	$ 110 003 26	$ 151 445 08	$ 167 520 93	$ 41 411 85	$ 57 517 68
	-	$ 378 434 88	$ 449 071 95	$ 507 032 59	$ 70 637 10	$128 597 74
	-	217 538 53	299 478 80	316 852 58	81 638 97	99 012 75
		[illegible]	[illegible]	[illegible]	[illegible]	1 262 89

207	$0.1379	$ 314 992 15	$ 355 758 61	$ 410 161 43	$ 40 766 46	$ 95 169 28
	0.0750	171 315 53	221 737 54	236 043 76	50 422 01	64 768 23
	.0140	31 978 90	24 759 61	29 349 00	3 219 29	2 629 90
	.0525	119 920 87	136 767 01	126 232 46	16 846 14	6 311 59
	.0300	68 526 61	71 533 10	74 004 24	3 006 49	5 477 63
	.0450	102 789 32	326 303 91	296 248 94	223 514 59	193 459 62
	.0330	75 378 83	75 366 43	81 373 82	22 40	5 994 99
	.0020	15 989 45	30 433 98	24 010 06	14 444 53	8 020 61
	.0150	34 263 11	26 730 01*	44 452 54	2 333 19	10 189 43
	.4094	$ 935 154 77	$1 269 390 20	$1 321 916 25	$334 235 43	$386 761 48
	0350	79 947 25	84 082 62	86 160 47	29 164 63	6 213 22
	.0036	7 994 72	-	-	7 994 72	7 994 72
	.4479	$1 023 096 74	$1 323 472 82	$1 408 078 72	$300 376 08	$384 979 98
048	$0.0343	$ 36 890 19	$ 58 470 89	$ 63 547 89	$ 21 580 70	$ 26 657 80
	.0290	31 351 44	62 975 60	65 297 42	31 624 16	33 945 98
	.0060	6 270 29	425 76	2 247 49	5 744 53	4 022 80
	.0300	31 351 44	36 958 26	41 332 72	5 606 82	9 981 28
	.0175	18 288 34	19 426 59	26 110 38	1 138 25	7 822 04
	.0180	18 810 86	52 043 54	101 008 13	33 232 68	82 197 27
	.0200	20 900 96	18 800 21	19 240 86	2 100 75	1 660 10
	.0025	2 612 62	5 808 06	4 971 47	2 895 44	2 358 85
	.0070	7 315 34	5 707 31*	10 444 59	1 808 03	5 129 36
	.1663	$ 173 791 48	$ 280 316 22	$ 334 200 75	$ 86 534 74	$160 409 27
	.0133	13 899 14	9 121 51	19 777 10	4 777 63	5 877 96
	.0014	1 463 07	-	-	1 463 07	1 463 07
	.1810	$ 189 153 69	$ 289 437 73	$ 353 977 85	$ 80 284 04	$164 824 16
808	$0.0140	$ 26 852 81	$ 34 842 45	$ 38 333 47	$ 8 289 94	$ 5 770 96
	.0080	15 172 86	14 755 66	15 471 40	407 30	294 84
	.0004	758 64	83 08	8 675 93	675 56	7 915 29
	.0100	18 966 08	16 801 47	19 715 03	2 364 61	748 95
	.0050	9 483 04	8 880 80	9 856 62	632 54	373 58
	.0069	11 189 99	49 822 74	53 896 19	38 252 75	42 695 20
	.0050	9 483 04	9 126 72	8 812 70	357 32	970 34
	.0025	2 465 59	5 044 25	3 331 73	2 578 66	866 14
	.0040	7 586 43	5 918 27*	4 822 08	1 668 16	2 764 35
	.0536	$ 101 658 18	$ 144 754 14	$ 157 592 15	$ 42 080 96	$ 55 933 97
	.0040	7 586 43	6 660 94	9 928 78	935 49	3 342 35
	.0004	758 64	-	-	758 64	758 64
	.0580	$ 110 003 25	$ 151 415 08	$ 167 520 93	$ 41 411 83	$ 57 517 68
	-	$ 378 434 85	$ 449 071 95	$ 807 032 59	$ 70 637 10	$128 597 74
	-	217 838 83	299 478 80	316 852 58	81 638 97	99 012 75
	-	39 007 83	35 268 45	40 270 42	13 739 38	1 262 59
	-	170 238 39	190 326 74	187 280 21	30 088 35	17 041 82
	-	96 297 99	99 810 19	109 971 24	3 513 20	13 673 25
	-	132 790 17	427 870 19	451 142 86	295 080 02	318 352 09
	-	105 762 83	103 292 36	109 127 38	2 470 47	3 364 55
	-	21 067 66	40 986 29	32 313 26	19 918 63	11 245 60
	-	49 164 88	38 355 59*	59 719 20	10 909 29	10 554 33
	-	$1 210 604 43	$1 674 460 56	$1 813 709 15	$463 856 13	$603 104 72
	-	101 432 82	69 365 07	115 865 35	31 567 75	14 433 53
	-	10 216 43	-	-	10 216 43	10 216 43
	-	$1 322 253 69	$1 744 325 63	$1 929 575 50	$423 071 95	$607 321 82
					24.2%	31 4%

r- orted for all e ecus n. *38 355 59 - Spread to spect on basis a Order 'a allowance

COMPARISONS OF SECRETARY'S COST ALLOWANCES, AND SUCH ALLOWANCES EQUATED TO REFLECT REVENUE YIELD, WITH EXPERIENCED COSTS OF 1931 (1)

FOR 9 PETITIONER AGENCIES WHICH HANDLED 42% OF VOLUME (EXCLUSIVE OF THAT HANDLED BY COOPERATIVE AGENCIES BEING THOSE PETITIONER AGENCIES HANDLING THE LARGEST VOLUME AS SHOWN AT PAGE 39 OF ORDER. TO WIT:
NOS. 46, 51, 54, 59, 63, 73, 82, 83, 84

Cost Factors allowed as described at page 79 of June 1933 Order	Selling & Buying No. of Head 9 Firms	ALLOWANCES PER ORDER JUNE 1933 "Standard" Rate per Head Order page 79	ALLOWANCES PER ORDER JUNE 1933 Amount	TOTAL COSTS AS CLAIMED By Gov't Bachmann Exhibits	TOTAL COSTS AS CLAIMED By Agencies	ORDER'S ALLOWANCES IN EXCESS OF Govt Costs	ORDER'S ALLOWANCES IN EXCESS OF Agencies
a	b	c	d	e		f	
CATTLE & CALVES	1 038 164						
Salesmanship & Buying		$0.1379	$143 162 82	$161 381 29	$189 103 74	$ 18 218 47	$ 44
Yarding Salaries		.0750	77 862 30	87 228 38	91 745 05	9 366 08	13
Yarding Expenses (Inc. S&B Exp.)		.0140	14 534 30	11 267 82	11 280 37	3 266 48	3
Office Salaries		.0525	54 503 61	53 992 76	50 708 46	510 85	5
Office Expenses		.0300	31 144 92	29 403 70	28 309 41	1 741 22	2
Business Getting & Maintenance		.0450	46 717 38	171 483 45	130 403 34	124 766 07	83
Administration & Gen'l Expenses		.0330	34 259 41	40 794 16	43 077 47	6 534 75	8
Insurance (Risk Expense)		.0070	7 267 15	13 985 77	12 706 15	6 718 62	5
Return on Investment		.0150	15 572 46	9 480 73	20 125 76	6 091 73	4
Total "Costs"		.4094	$425 024 35	$579 018 05	$576 459 74	$153 993 71	$151
Profit - Management		.0350	36 335 74	24 490 14	43 273 92	11 845 60	6
Uninsurable Risks		.0035	3 633 57			3 633 57	3
TOTAL COST + PROFIT		.4479	$464 993 66	$603 508 20	$619 733 66	$138 814 54	$154
HOGS	521 722						
Salesmanship & Buying		$0.0353	$ 18 416 79	$ 44 110 63	$ 29 984 24	$ 25 702 84	$ 11
Yarding Salaries		.0300	15 651 66	24 110 63	24 861 19	8 458 97	9
Yarding Expenses (Inc. S&B Exp.)		.0060	3 130 33	141 08	128 31	2 989 25	3
Office Salaries		.0300	15 651 65	15 364 60	17 660 65	287 05	2
Office Expenses		.0175	9 130 14	8 129 14	9 470 77	1 001 00	
Business Getting & Maintenance		.0180	9 391 00	25 239 98	46 145 51	15 847 98	36
Administration & Gen'l Expenses		.0200	10 434 44	11 143 35	10 935 03	708 91	
Insurance (Risk Expense)		.0025	1 304 31	3 155 59	2 530 48	1 851 28	
Return on Investment		.0070	3 652 05	2 024 30	4 322 40	1 627 75	
Total "Costs"		.1663	$ 86 762 37	$125 427 30	$145 998 59	$ 46 564 93	$ 58
Profit - Management		.0133	6 938 90	4 750 67	9 476 92	3 188 23	
Uninsurable Risks		.0014	730 41	-	-	730 41	
TOTAL COSTS + PROFIT		.1810	$ 94 431 68	$130 177 97	$155 475 51	$ 43 746 29	$ 63
SHEEP	1 013 241						
Salesmanship & Buying		$0.0140	$ 14 188 97	$ 17 261 75	$ 16 013 13	$ 3 076 39	$
Yarding Salaries		.0080	8 105 93	8 549 54	8 549 54	2 556 39	
Yarding Expenses (Inc. S&B Exp.)		.0004	405 30	21 76	21 98	383 54	
Office Salaries		.0100	10 132 41	6 657 00	7 290 57	3 475 41	
Office Expenses		.0060	5 066 21	2 736 82	3 098 34	2 329 39	
Business Getting & Maintenance		.0059	5 978 12	23 634 09	21 913 42	17 655 97	15
Administration & Gen'l Expenses		.0060	5 066 21	4 196 92	3 890 93	870 29	
Insurance (Risk Expense)		.0013	1 317 21	2 901 14	1 818 88	1 583 93	
Return on Investment		.0040	4 052 96	2 099 12	2 143 94	1 953 84	
Total "Costs"		.0536	$ 54 309 72	$ 65 257 15	$ 61 739 69	$ 10 947 43	$
Profit - Management		.0040	4 052 96	2 020 05	5 484 17	2 032 91	
Uninsurable Risks		.0004	405 30			405 30	
TOTAL COSTS + PROFIT		.0580	$ 58 767 98	$ 67 277 20	$ 67 223 86	$ 8 509 22	$
ALL SPECIES							
Salesmanship & Buying		-	$175 764 98	$222 762 68	$234 100 10	$ 46 997 70	$
Yarding Salaries		-	101 619 89	116 888 55	122 155 78	15 269 66	2
Yarding Expenses		-	18 069 93	11 430 66	11 430 66	6 639 27	
Office Salaries		-	80 287 67	76 014 36	75 656 71	4 273 31	
						5 021 61	

Yarding Expenses (Inc. S&B Exp.)		.0140	14 534 30	11 267 82	11 280 37	3 266 48	3
Office Salaries		.0525	54 503 61	53 992 76	80 708 46	510 85	3
Office Expenses		.0300	31 144 92	29 403 70	28 309 41	1 741 22	2
Business Getting & Maintenance		.0450	46 717 38	171 483 45	130 403 34	124 766 07	83
Administration & Gen'l Expenses		.0330	34 259 41	40 794 16	43 077 47	6 534 76	8
Insurance (Risk Expense)		.0070	7 267 15	13 985 77	12 706 15	6 718 62	5
Return on Investment		.0150	15 572 46	9 480 73	20 125 78	6 091 73	4
Total "Costs"		.4094	$425 024 35	$579 018 05	$576 459 74	$153 993 71	$151
Profit - Management		.0350	36 335 74	24 490 14	43 273 92	11 845 60	6
Uninsurable Risks		.0036	3 633 57			3 633 57	3
TOTAL COST + PROFIT		.4479	$464 993 66	$603 508 20	$619 733 66	$169 814 84	$164
HOGS	521 722						
Salesmanship & Buying		$0.0353	$ 18 416 79	$ 44 110 63	$ 29 984 24	$ 26 702 84	$ 11
Yarding Salaries		.0300	15 651 66	34 110 63	34 861 19	8 458 97	9
Yarding Expenses (Inc. S&B Exp.)		.0060	3 130 33	141 08	128 31	3 989 25	3
Office Salaries		.0300	15 651 66	15 364 60	17 660 66	387 05	2
Office Expenses		.0175	9 130 14	8 129 14	9 470 77	1 001 00	
Business Getting & Maintenance		.0180	9 391 00	28 232 98	48 145 51	15 847 98	36
Administration & Gen'l Expenses		.0200	10 434 44	11 143 36	10 935 03	708 91	
Insurance (Risk Expense)		.0025	1 304 31	3 185 59	2 830 46	1 881 28	
Return on Investment		.0070	3 652 08	2 024 30	4 322 40	1 627 75	
Total "Costs"		.1663	$ 86 762 37	$133 427 30	$145 998 59	$ 46 564 93	$ 59
Profit - Management		.0133	6 938 90	4 780 67	9 476 92	2 188 29	2
Uninsurable Risks		.0014	730 41	-	-	730 41	
TOTAL COST + PROFIT		.1810	$ 94 431 68	$138 177 97	$155 475 51	$ 43 746 29	$ 61
SHEEP	1 013 241						
Salesmanship & Buying		$0.0140	$ 14 188 37	$ 17 261 75	$ 16 012 12	$ 3 076 39	$ 1
Yarding Salaries		.0080	8 105 93	8 549 54	8 549 54	2 686 39	2
Yarding Expenses (Inc. S&B Exp.)		.0004	405 30	21 76	21 98	383 54	
Office Salaries		.0100	10 132 41	6 667 00	7 290 57	3 475 41	2
Office Expenses		.0050	5 066 21	2 736 92	3 098 34	2 329 69	1
Business Getting & Maintenance		.0089	5 978 12	23 634 09	21 913 42	17 655 97	15
Administration & Gen'l Expenses		.0050	5 066 21	4 196 92	3 990 93	870 29	1
Insurance (Risk Expense)		.0013	1 317 21	2 901 14	1 818 85	1 583 93	
Return on Investment		.0040	4 052 96	2 089 12	2 143 94	1 955 84	1
Total "Costs"		.0536	$ 54 709 72	$ 65 257 15	$ 61 789 69	$ 10 947 43	$ 7
Profit - Management		.0040	4 052 96	2 020 08	5 484 17	2 032 91	1
Uninsurable Risks		.0004	405 30			405 30	
TOTAL COSTS + PROFIT		.0580	$ 58 767 98	$ 67 277 20	$ 67 223 86	$ 8 509 22	$ 8
ALL SPECIES							
Salesmanship & Buying		-	$178 764 98	$222 762 62	$234 100 10	$ 46 997 70	$ 58
Yarding Salaries		-	101 619 89	116 [illegible] 55	122 155 78	15 269 66	20
Yarding Expenses		-	18 069 93	11 430 66	11 430 66	6 639 27	6
Office Salaries		-	80 287 67	76 014 36	78 659 71	4 273 31	4
Office Expenses		-	45 341 27	40 269 66	40 838 62	5 071 61	4
Business Getting & Maintenance		-	68 086 50	220 566 52	198 462 27	188 470 02	136
Administration & Gen'l Expenses		-	49 760 06	56 133 43	57 903 43	6 373 37	8
Insurance (Risk Expense)		-	9 888 67	20 042 80	17 086 46	10 153 83	7
Return on Investment		-	22 377 47	13 604 15	26 982 09	9 673 22	3
Total "Costs"		-	$606 096 44	$777 702 81	$784 [illegible] 03	$311 606 07	$318
Profit - Management		-	47 827 80	31 280 88	[illegible] 01	16 066 74	16
Uninsurable Risks		-	4 769 28	-	-	4 769 28	4
TOTAL COSTS + PROFIT		-	$610 193 52	$808 [illegible] 97	$944 [illegible] 03	$330 770 00	$338
PERCENT DEFICIENCY OF ORDER'S ALLOWANCE						23.58%	26.

(1) Government Accountants Costs do not deal with selling and buying services separately; as a consequence selling and buying costs are here c
The June, 1933 order prescribes the same rates as maxima for both services.

(2) "Interest" (Return on Investment) computed but not included in government unit costs per Mr. Buchanan's Exhibits. Amounts applicable to th
included here by prorate based on allowance in June 1933 order, to wit: Cattle 60.08%, Hogs 14.88%, Sheep 15.43%.

(3) The equation of the Order's standard rates as here shown is based on the relation of SELLING SERVICE revenue only resulting from applying
selling volume, the revenue yield being related to products of the "Standard" cost rates in the ratios noted in Column b. The revenue test

PETITIONERS EXHIBIT NO 8
Roberts J W

F ALLOWANCES, AND SUCH ALLOWANCES EQUATED TO REFLECT REVENUE YIELD. WITH EXPERIENCED COSTS OF 1931 (1)

YIS WHICH HANDLED 42% OF VOLUME (EXCLUSIVE OF THAT HANDLED BY COOPERATIVE AGENCIES
ITIONER AGENCIES HANDLING THE LARGEST VOLUME AS SHOWN AT PAGE 39 OF ORDER. TO WIT:
NOS. 46, 51, 54, 59, 63, 73, 82, 83, 84

& Buying Head Items	ALLOWANCES PER ORDER JUNE 1933 "Standard" Rate per head Order page 79	Amount	TOTAL COSTS AS CLAIMED By Gov't Bachmann Exhibits	By Agencies	ORDER'S ALLOWANCES IN EXCESS (Deficiency in Red) Of Govt Costs	Of Agcy Costs
b	c	d	e		f	g
164						
	50.1379	$143 162 82	$161 381 29	$188 103 74	$ 18 218 47	$ 44 940 92
	0750	77 862 30	87 228 38	91 745 05	9 366 08	13 882 75
	0140	14 534 30	11 267 82	11 280 37	[illegible]	[illegible]
	0525	54 503 61	53 992 76	50 708 46	[illegible]	[illegible]
	0300	31 144 92	29 403 70	28 309 41	[illegible]	[illegible]
	0450	46 717 38	171 483 45	130 403 34	124 766 07	83 685 96
	0330	34 259 41	40 794 16	43 077 47	6 534 76	8 818 06
	0078	7 267 15	13 985 77	12 706 15	6 718 62	5 439 00
	0150	15 572 46	9 480 73	20 125 75	[illegible]	4 553 29
	.4094	425 024 35	$579 018 06	$576 459 74	$153.993 71	$151 435 39
	0350	36 335 74	24 490 14	43 273 92	11 845 [illegible]	6 938 18
	0035	3 633 57			[illegible]	[illegible]
	4479	$464 993 66	$603 508 20	$619 733 66	$138 814 54	$154 740 00
722						
	$0.0353	$ 18 416 79	$ 44 116 63	$ 29 984 24	$ 25 702 84	$ 11 567 45
	0300	15 651 66	24 110 63	24 861 19	8 458 97	9 209 53
	0060	3 130 33	141 08	128 31	[illegible]	[illegible]
	.0300	15 651 65	15 364 60	17 660 68	[illegible]	2 009 03
	.0175	9 130 14	8 129 14	9 430 77	[illegible]	300 63
	.0180	9 391 00	25 238 98	46 145 51	15 847 98	36 754 51
	.0200	10 434 44	11 143 35	10 935 03	708 91	500 59
	.0025	1 304 31	3 155 59	2 830 48	1 851 28	226 15
	.0070	3 652 05	2 034 30	4 323 40	1 627 [illegible]	670 35
	.1663	$ 86 762 37	$135 427 30	$145 968 59	$ 46 564 93	$ 59 236 22
	.0133	6 938 90	4 750 67	9 476 92	[illegible]	2 538 02
	0014	730 41	-	-	[illegible]	[illegible]
	.1810	$ 94 431 68	$138 177 97	$155 475 51	$ 43 746 29	$ 61 043 83
241						
	$0.0140	$ 14 188 37	$ 17 281 75	$ 16 012 12	$ 3 076 39	$ 1 826 75
	0080	8 105 93	5 549 54	5 549 54	[illegible]	[illegible]
	.0004	405 30	21 76	21 98	[illegible]	[illegible]
	.0100	10 132 41	6 667 00	7 290 57	[illegible]	[illegible]
	.0060	5 066 21	2 736 82	3 098 34	[illegible]	[illegible]
	.0059	5 978 12	23 634 09	21 913 42	17 855 97	15 935 30
	.0060	5 066 21	4 195 92	[illegible] 890 93	[illegible]	[illegible]
	.0013	1 317 21	2 901 14	1 818 85	1 583 93	501 64
	.0040	4 052 96	2 099 12	2 143 94	[illegible]	[illegible]
	.0686	$ 54 709 72	$ 65 257 15	$ 61 739 69	$ 10 947 43	$ 7 429 97
	.0040	4 052 96	2 020 05	5 484 17	[illegible]	1 431 21
	.0004	405 30	-	-	[illegible]	[illegible]
	.0680	$ 58 767 98	$ 67 277 20	$ 67 223 86	$ 8 509 22	$ 8 455 88
	-	$175 764 98	$222 762 68	$234 100 10	$ 46 997 70	$ 58 336 12
	-	101 619 89	116 988 55	122 155 78	15 269 66	20 536 89
	-	18 069 93	11 430 66	11 430 66	[illegible]	[illegible]
	-	80 287 67	76 014 36	75 659 71	[illegible]	[illegible]
	-	45 341 27	40 269 66	40 838 52	[illegible]	[illegible]
	-	69 086 50	330 566 52	198 462 27	158 470 02	136 375 77
	-	49.760 06	56 133 43	57 903 43	[illegible]	[illegible]
	-	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

	0750	77 862 30	87 228 38	[illegible]	[illegible]	[illegible]
	0140	14 534 30	11 267 82	11 280 37	[illegible]	[illegible]
	0525	54 503 61	53 992 76	50 708 46	[illegible]	[illegible]
	.0300	31 144 92	29 403 70	28 309 41	[illegible]	[illegible]
	0450	46 717 38	171 483 45	130 403 34	124 766 07	83 685 96
	0330	34 259 41	40 794 16	43 077 47	6 534 75	8 618 08
	0070	7 267 15	13 985 77	12 706 15	6 718 82	5 439 00
	0150	15 572 46	9 480 73	20 125 75	[illegible]	4 553 29
	.4094	$425 024 35	$579 018 05	$576 459 74	$153 993 71	$151 435 39
	0350	36 335 74	24 490 14	43 273 92	[illegible]	6 938 18
	0035	3 633 57			[illegible]	[illegible]
	4479	$464 993 66	$603 508 20	$619 733 66	$138 814 54	$154 740 00
722						
	$0 0353	$ 18 416 79	$ 44 116 63	$ 29 984 24	$ 25 702 84	$ 11 567 45
	0300	15 651 66	34 110 63	34 861 19	8 458 97	9 209 63
	0060	3 130 33	141 08	128 31	[illegible]	[illegible]
	.0300	15 651 65	15 364 60	17 660 66	[illegible]	2 009 03
	.0175	9 130 14	8 129 14	9 470 77	[illegible]	300 63
	.0180	9 391 00	25 238 98	46 145 51	15 847 98	36 754 51
	.0200	10 434 44	11 143 36	10 935 03	708 91	500 59
	.0025	1 304 31	3 155 59	2 530 48	1 851 28	226 15
	0070	3 652 05	2 024 30	4 322 40	[illegible]	670 36
	.1663	$ 86 762 37	$183 427 30	$145 968 59	$ 46 564 93	$ 59 236 22
	.0133	6 938 90	4 750 67	9 476 92	[illegible]	2 538 02
	0014	730 41	-	[illegible]	[illegible]	[illegible]
	.1810	$ 94 431 68	$138 177 97	$155 475 51	$ 43 748 29	$ 61 043 83
241						
	$0.0140	$ 14 188 37	$ 17 261 75	$ 16 012 13	$ 3 076 39	$ 1 826 75
	0080	8 105 93	5 549 54	5 549 54	[illegible]	[illegible]
	.0004	405 30	21 76	21 98	[illegible]	[illegible]
	.0100	10 132 41	6 667 00	7 290 57	[illegible]	[illegible]
	.0050	5 066 21	2 736 82	3 098 34	[illegible]	[illegible]
	.0059	5 978 12	23 634 09	21 913 42	17 855 97	16 935 30
	.0050	5 066 21	4 196 92	3 890 93	[illegible]	[illegible]
	.0013	1 317 21	2 901 14	1 818 85	1 583 93	501 64
	.0040	4 052.96	2 099 12	3 143 94	[illegible]	[illegible]
	.0636	$ 54 709 72	$ 65 257 15	$ 61 739 69	$ 10 947 43	$ 7 429 97
	.0040	4 052 96	2 030 05	5 484 17	[illegible]	1 431 21
	.0004	405 30	-	-	[illegible]	[illegible]
	.0680	$ 58 767 98	$ 67 277 20	$ 67 223 86	$ 8 509 22	$ 8 455 88
	-	$175 764 98	$222 762 68	$234 100 10	$ 46 997 70	$ 58 336 12
	-	101 619 89	116 988 55	122 155 78	15 369 66	20 536 89
	-	18 069 93	11 430 66	11 430 66	[illegible]	[illegible]
	-	80 287 67	76 014 36	75 659 71	[illegible]	[illegible]
	-	45 341 27	40 269 66	40 838 52	[illegible]	[illegible]
	-	68 086 50	320 566 52	198 462 27	158 470 02	136 375 77
	-	49 760 06	56 133 43	57 903 43	6 373 37	8 143 37
	-	9 888 67	20 042 80	17 055 46	10 153 83	7 166 79
	-	23 377 47	13 604 15	26 692 09	[illegible]	3 314 62
	-	$566 096 44	$777 702 51	$794 196 02	$211 606 07	$228 101 58
	-	47 327 80	31 260 86	58 [illegible] 01	[illegible]	10 907 41
	-	4 769 28	-	-	[illegible]	[illegible]
	-	$618 193 52	$808 963 37	$848 435 03	$180 770 05	$234 239 71
					23.56%	26.62%

t deal with selling and buying services separately; as a consequence selling and buying costs are here consolidated.
e same rates as maxima for both services.
computed but not included in government unit costs per Mr. Bachmann's Exhibits. Amounts applicable to these firms allowance in June 1933 order, to wit: Cattle 88.69%, Hogs 14.88%, Sheep 15.43%.
ed rates as here shown is based on the relation of SELLING SERVICE revenue only resulting from applying of the ordered rates to 1931 being related to products of the "Standard" cost rates in the ratios used in Column b. The revenue test did not include Buying Service Revenues.

MEMORANDUM

COMPARING THE SECRETARY'S REQUIRED PERFORMANCE IN SELLING AND BUYING WITH ACTUAL PERFORMANCE - 193

Line	Item	CATTLE		SWINE		SHEEP
		Secretary's Requirement	Actual	Secretary's Requirement	Actual	Secretary's Requirement
1	Number full-year salesmen and buyers	78.77	188	12.29	50	7.59
2	Number of head S&B, market total	2 284 207		1 045 048		1
3	Number of drafts S&B, market	457 688		103 341		
4	Number of man-hours per year S&B	49 152	117 312	7 669	31 200	4 736
5	Sales per hour (line 3-:-4)	8.90	3.73	13.48	3.31	9.05
6	Head sold per hour (line 2-:-4)	46.47	19.47	136.27	33.50	400.47
7	Value per head (based on 30% 1931 mkt vol)	$ 46.51		$ 14.04		
8	Proceeds value hourly transactions (line 6 x 7)	$2 161.32	$905.55	$1 913.23	$470.34	$2 134.51
9	Number of head per transaction (line 2-:-3)	5.22		10.11		
10	Man-minutes per sale (60 min -:-line 5)	6.74	16.09	4.45	18.13	6.63
11	Proceeds value per sale (line 7 x 9)	$ 242.78		$ 141.94		

NOTE: Based on Government accountant's 1931 volume figures and blue audits, and 1931 revenue and proceeds studies.

J W Roberts,
Chicago, Ill.
July 1, 1933.

Ex Nog - In 7/27/34

~~STATEMENT NO. 4~~

MEMORANDUM

...ED PERFORMANCE IN SELLING AND BUYING WITH ACTUAL PERFORMANCE - 1931

CATTLE		SWINE		SHEEP	
...tary's ...irement	Actual	Secretary's Requirement	Actual	Secretary's Requirement	Actual
...8.77	188	12.29	50	7.59	15
2 284 207		1 045 048		1 896 608	
437 688		103 341		42 867	
... 152	117 312	7 669	31 200	4 736	9 360
8.90	3.73	13.48	3.31	9.05	4.58
46.47	19.47	136.27	33.50	400.47	202.53
$ 46.51		$ 14.04		$ 5.33	
161.32	$905.55	$1 913.23	$470.34	$2 134.51	$1 080.02
5.22		10.11		44.24	
6.74	16.09	4.45	18.13	6.63	13.10
$ 242.78		$ 141.94		$ 235.80	

...es and blue audits, and 1931 revenue and proceeds studies.

BUSINESS GETTING AND MAINTENANCE COSTS - 1931
59 AGENCIES KANSAS CITY MARKET
ANALYSIS OF AMOUNTS SO CLASSIFIED BY GOVERNMENT AND BY PETITIONER

A - ANALYSES OF CHARGES

Item	Government Costs per Mr. Backman's Exhibits (1)	Element A- Advertising & Customer Correspondence (2)
1. Advertising Expenditures	$ 111 741 32	$ 111 741 32
2. Local and Miscellaneous entertaining of customers	3 095 33	3 095 33
3. K. C. Livestock Exchange expenses - Membership dues, etc.	31 713 64	-
4. Automobile operating expenses	9 437 80	-
5. Automobile depreciation expense	4 185 75	
6. Travel expenses of personnel	99 623 77	
7. Total - Voluntary expenses	$ 248 797 31	$ 114 836 65
Proportion of Salaries and Wages of Personnel		
8. Agency owners salaries - proportion of	$ 88 256 78	$ 49 003 31
9. Employees salaries - proportion of	89 816 10	58 526 49
10. Total - proportion unavoidable salary expense	$ 178 072 88	$ 107 529 80
11. Total charges to BGAM - as taken into unit costs	$ 427 870 19	$ 222 366 45

B - CHARACTER AND SIGNIFI

Item a	Per Costs as alleged by b	ADVERTISING EXPENSE: VOLUNTARY: Promotional Advertising Expense c	Customer Entertainment Expense d	TOTAL VOLUNTARY EXPENDITURES e	INVOLUNTARY: Cost of Regular Workers time Mailing Circulars, etc. and corresponding with customers f	T ADVE EX
Amounts involved	Govt	$111 741 32	$ 3 095 33	$ 114 836 65	$178 072 88	$[illegible]
	Agencies	111 741 32	3 095 33	114 836 65	107 529 80	[illegible]
SIGNIFICANCE						
(a) Avg. Cost per customer (per number owners on accounts sale & purchase per Govt Exhibits (274515)	(Govt	40.7¢	1.13¢	41.83¢	65¢	[illegible]
	(Agencies	40.7¢	1.13¢	41.83¢	39¢	[illegible]
(b) Avg. Cost per market transaction (per number of accounts sale & purchase rendered (267660)	(Govt	41.7¢	1.16¢	42.86¢	66.5¢	[illegible]
	(Agencies	41.7¢	1.16¢	42.86¢	40.9¢	[illegible]
(c) Percent of market value per transaction ($473.74) (Gross proceeds $126,600,898-:-267660 per b)	(Govt	-	-	9/100 of 1%	14/100 of 1%	23/100
	(Agencies	-	-	9/100 of 1%	8/100 of 1%	18/100
(d) Percent of commission earnings per transaction ($6.31) (Gross Revenues earned $1,689,708-:-267660)	(Govt	-	-	6.79%		
	(Agencies	-	-	6.79%		
(e) Percent of total service costs exclusive of return on investment ($1 744 325 63	Govt Exhs	6.41%	0.19%	6.59%	a 10.21%	a [illegible]
(1 222 253 68	Govt Allowance	8.45%	0.22%	[illegible]	[illegible]	

2. [illegible] entertaining of customers	[illegible]	[illegible]
3. K. C. Livestock Exchange expenses - Membership dues, etc.	[illegible] 713 64	-
4. Automobile operating expenses	9 437 80	-
5. Automobile depreciation expense	4 186 78	
6. Travel expenses of personnel	99 623 77	
7. Total - Voluntary expenses	$ 248 797 [illegible]	$ 114 [illegible] 65
Proportion of Salaries and Wages of Personnel		
8. Agency owners salaries - proportion of	$ 88 256 78	$ 49 003 31
9. Employees salaries - proportion of	89 816 10	58 526 49
10. Total - proportion unavoidable salary expense	$ 178 072 88	$ 107 529 80
11. Total charges to BOAM - as taken into unit costs	$ 427 870 19	$ 222 366 45

B - CHARACTER AND SIGNIFIC[illegible]

Item	Per Costs as alleged by	ADVERTISING EXPENSE: VOLUNTARY: Promotional Advertising Expense	Customer Entertainment Expense	TOTAL VOLUNTARY EXPENDITURES	INVOLUNTARY: Cost of Regular Workers time Mailing Circulars, etc. and corresponding with customers	TOT[illegible] ADVERT[illegible] EXP[illegible]
a	b	c	d	e	f	g
Amounts involved	Govt	$111 741 32	$ 3 095 33	$ 114 836 65	$178 072 88	$[illegible]
	Agencies	111 741 32	3 095 33	114 836 65	107 529 80	[illegible]
SIGNIFICANCE						
(a) Avg. Cost per customer (per number owners on accounts sale & purchase per Govt Exhibits (274515)	(Govt	40.7¢	1.13¢	41.83¢	65¢	1[illegible]
	(Agencies	40.7¢	1.13¢	41.83¢	39¢	[illegible]
(b) Avg. Cost per market transaction (per number of accounts sale & purchase rendered (267660)	(Govt	41.7¢	1.16¢	42.86¢	66.5¢	1[illegible]
	(Agencies	41.7¢	1.16¢	42.86¢	40.9¢	[illegible]
(c) Percent of market value per transaction ($473.74) (Gross proceeds $126,600,896-:-267660 per b)	(Govt	-	-	9/100 of 1%	14/100 of 1%	23/10[illegible]
	(Agencies	-	-	9/100 of 1%	8/100 of 1%	18/10[illegible]
(d) Percent of commission earnings per transaction ($6.31) (Gross Revenues earned $1,689,708-:-267660)	(Govt	-	-	6.79%		
	(Agencies	-	-	6.79%		
(e) Percent of total service costs exclusive of return on investment ($1 744 325 63	Govt Exhs	6.41%	0.19%	6.59%	a 10.21%	a 1[illegible]
(1 322 253 68	Govt Allowance	8.45%	0.23%	8.68%	a 13.47%	a 2[illegible]
(1 929 575 50	Agencies	5.79%	0.16%	5.95%	b 8.57%	b 1[illegible]

(1) Difference of $[illegible] 372 07, Agency costs being the greater, due to agencies' use of independently appraised worth of owners' services rendered, if any, as owner compensation.

(2) As to Cattle - Proceeds based on avg. of 46 agencies handling 85% 1931 volume per Exhibit 249.
As to Hogs and Sheep, based on avg. of 16 agencies handling 80% 1931 volume per Exhibit 250.

Cattle,	2023647	head at $48.36 each	$97 868 569
Calves,	260560	head at 15.96 "	4 158 932
Hogs,	1045048	head at 14.04 "	14 672 474
Sheep,	1896608	head at 5.33 "	10 108 921
Total proceeds value (approximately)			$126 800 896

(3) See separate exhibit relating to country service expense - BOAM Element B.

PETITIONERS' EXHIBIT NO. 10
WITNESS: Roberts, J. W.

BUSINESS GETTING AND MAINTENANCE COSTS - 1951
50 AGENCIES KANSAS CITY MARKET
BASIS OF ACCOUNTS AS CLASSIFIED BY GOVERNMENT AND BY PETITIONER AGENCIES

A - ANALYSES OF CHARGES

	Government Costs per Mr. Backman's Exhibits (1)	Element A- Advertising & Customer Correspondence (2)	Element B- Country Trips (Auxiliary Selling Expense) (3)	Together (4)	
	$ 111 741 39	$ 111 741 39	-		
taining of customers	3 095 33	3 095 33	-		
nses - Membership dues, etc.	21 713 64	-	$ 21 713 64		
	9 457 80	-	9 457 80		
se	4 185 75		4 185 75		
	99 623 77		99 623 77		
	$ 249 797 31	$ 114 836 66	$ 134 960 66	$ 249 797 31	
ses of Personnel					
portion of	$ 88 256 78	$ 49 003 31	$ 62 525 54	$ 111 528 85	- See Note 1 below for explanation
tion of	89 816 10	58 526 49	31 289 61	89 816 10	of difference of $23 272 07
able salary expense	$ 178 072 88	$ 107 529 80	$ 93 815 15	$ 201 344 95	
Taken into unit costs	$ 427 870 19	$ 222 366 45	$ 228 776 81	$ 451 142 26	

B - CHARACTER AND SIGNIFICANCE OF ABOVE EXPENSES

ADVERTISING EXPENSE					COUNTRY (AUXILIARY SELLING) SERVICE EXPENSE (3)			
VOLUNTARY		INVOLUNTARY						
Personal Solicitation Expense	Customer Entertainment Expense	TOTAL VOLUNTARY EXPENDITURES	Cost of Regular Workers time Mailing Circulars, etc. and corresponding with customers	TOTAL ADVERTISING EXPENSE	SECRETARY'S ALLOWANCE FOR 1951 Per June 16, 1938, order	Travel and incidental expenses	Cost of Regular Workers time Spent in Country Service Trips	TOTAL COUNTRY TRIP EXPENSE	SECRETARY'S ALLOWANCE FOR THIS EXPENSE
c	d	e	f	g	h	i	j	k	l
41.32	$ 3 095 33	$ 114 836 65	$178 072 88	$292 909 53	$122 790 17	$ 134 960 66	none	$134 960 66	None
41.32	3 095 33	114 836 65	107 529 80	222 366 45	-	134 960 66	$ 93 815 15	228 775 81	
40.7¢	1.13¢	41.83¢	65¢	106.83¢	48.4¢	49¢	-	49¢	None
40.7¢	1.13¢	41.83¢	39¢	80.83¢		49¢	34¢	83¢	
41.7¢	1.16¢	42.86¢	66.5¢	109.36¢	49.6¢	80.4¢	-	80.4¢	None
41.7¢	1.16¢	42.86¢	40.9¢	83.76¢		80.4¢	35¢	85.4¢	
-	-	9/100 of 1%	14/100 of 1%	23/100 of 1%		-	-	-	-
-	-	9/100 of 1%	8/100 of 1%	18/100 of 1%	11/100 of 1%	-	-	-	-
-	-	6.79%			7.86%	-	-	-	-
-	-	6.79%				-	-	-	-
-	-	-	-	-	-	-	-	-	-

[illegible] of customers	$ 3 095 33	$ 3 095 33	-	
nses - Membership dues, etc.	21 713 64	-	$ 21 713 64	
	9 437 80	-	9 437 80	
ise	4 185 76		4 185 76	
	99 823 77		99 823 77	
	$ 249 797 31	$ 114 [illegible] 65	$ 134 980 66	$ 249 797 31
ses of Personnel				
proportion of	$ 88 256 78	$ 49 003 31	$ 62 525 54	$ 111 528 85 - See Note 1 below for explanation
rtion of	89 816 10	58 526 49	31 289 61	89 816 10 of difference of $23 872 07
able salary expense	$ 178 072 88	$ 107 529 80	$ 93 815 15	$ 201 344 95
taken into unit costs	$ 427 870 19	$ 222 366 45	$ 228 776 81	$ 451 142 26

B - CHARACTER AND SIGNIFICANCE OF ABOVE EXPENSES

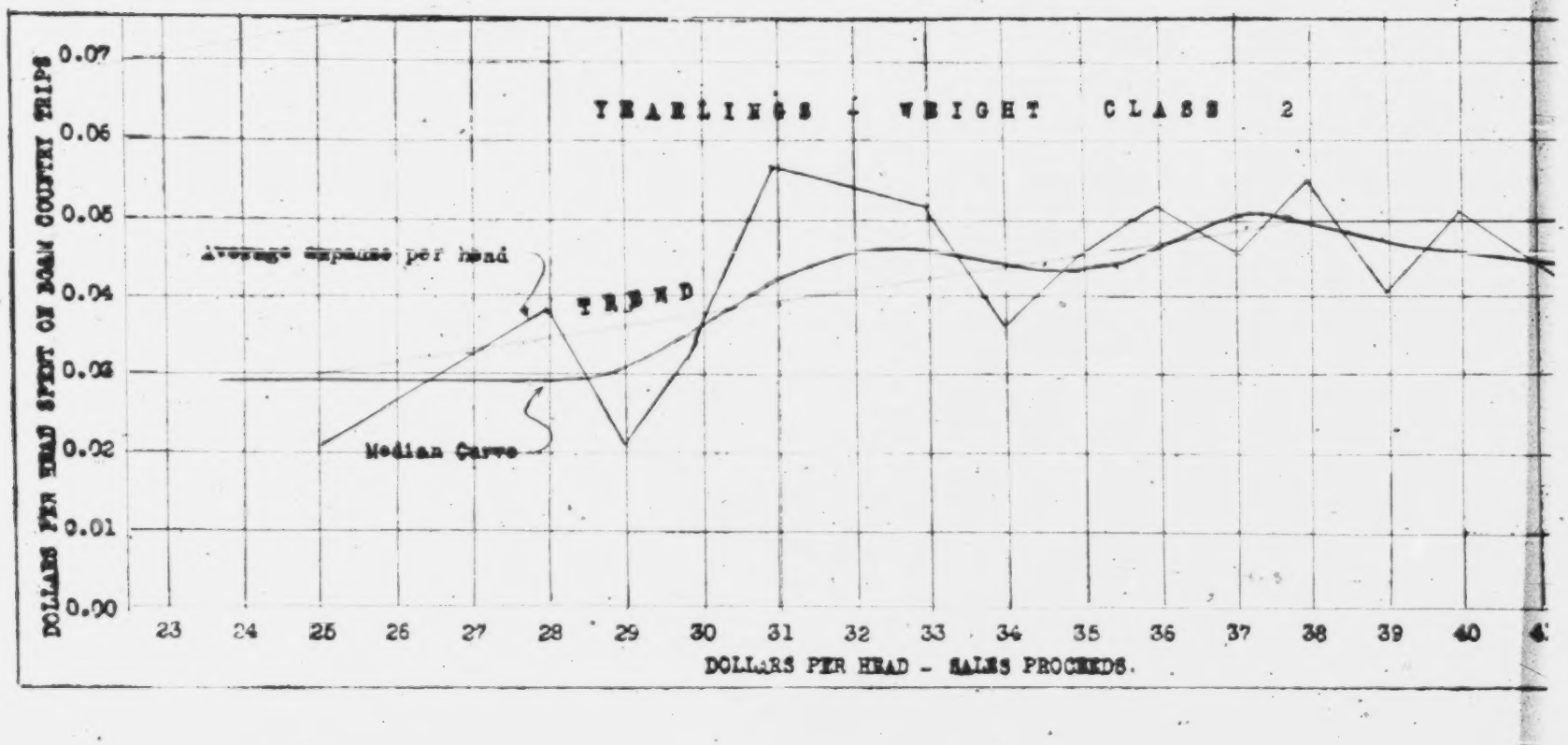
ADVERTISING EXPENSE						COUNTRY (AUXILIARY SELLING) SERVICE EXPENSE (3)			
LUNTARY			INVOLUNTARY						
ional ising nse	Customer Entertainment Expense	TOTAL VOLUNTARY EXPENDITURES	Cost of Regular Workers time Mailing Circulars, etc. and corresponding with customers	TOTAL ADVERTISING EXP	SECRETARY'S ALLOWANCE FOR BOARD Per June 16, 1938, other	Travel and incidental expenses	Cost of Regular Workers time Spent in Country Service Trips	TOTAL COUNTRY TRIP EXPENSE	SECRETARY'S ALLOWANCE FOR THIS EXPENSE
	d	e	f	g	h	i	j	k	l
11 32	$ 3 095 33	$ 114 836 65	$178 072 88	$292 909 86	$132 790 17	$ 134 980 66	none	$134 980 66	None
11 32	3 095 33	114 836 65	107 529 80	222 366 45	-	134 960 66	$ 93 815 15	228 775 81	
10.7¢	1.13¢	41.83¢	65¢	106.83¢	48.4¢	49¢	-	49¢	None
10.7¢	1.13¢	41.83¢	39¢	80.83¢		49¢	34¢	83¢	
11.7¢	1.16¢	42.86¢	66.8¢	109.36¢	49.6¢	80.4¢	-	80.4¢	None
11.7¢	1.16¢	42.86¢	40.9¢	83.76¢		80.4¢	35¢	85.4¢	
-	-	9/100 of 1%	14/100 of 1%	23/100 of 1%		-	-	-	-
-	-	9/100 of 1%	8/100 of 1%	18/100 of 1%	11/100 of 1%	-	-	-	-
-	-	6.79%			7.86%	-	-	-	-
-	-	6.79%				-	-	-	-
.41%	0.19%	6.58%	a 10.21%	a 16.79%	-	-	-	-	-
.45%	0.22%	8.68%	a 13.47%	a 22.15%	10.04%	-	-	-	-
.79%	0.16%	5.96%	b 8.67%	b 11.52%	-	-	-	-	-

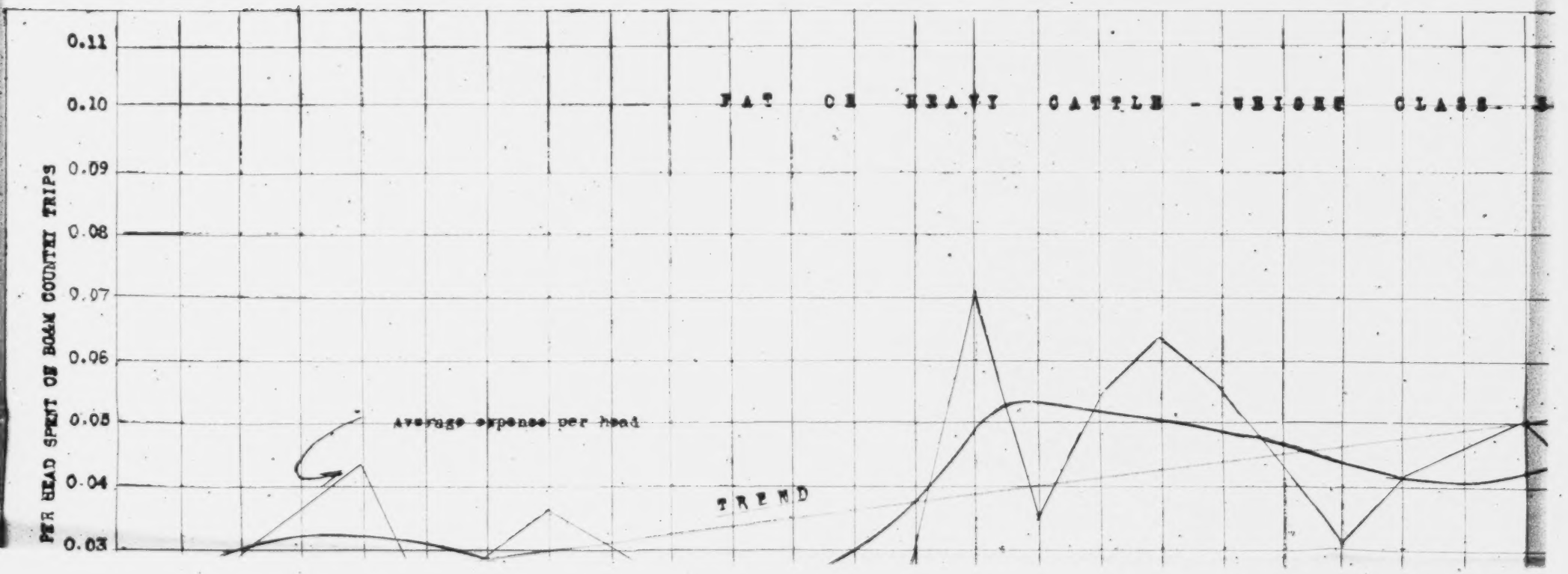
b of independently appraised worth of owners' services rendered, whereas government used drawing accounts, or booked net earnings.

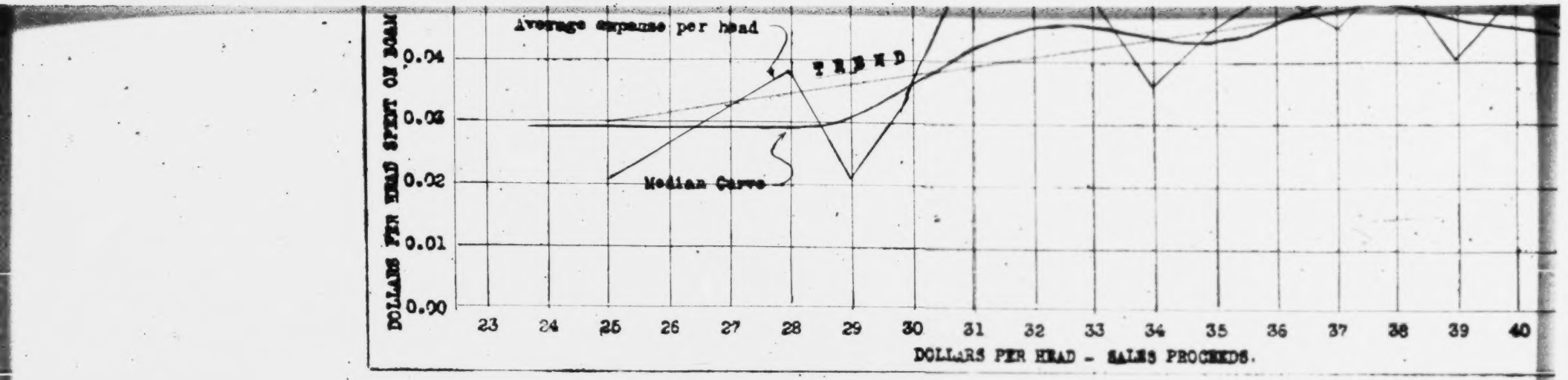
per Exhibit 249.
per Exhibit 250.

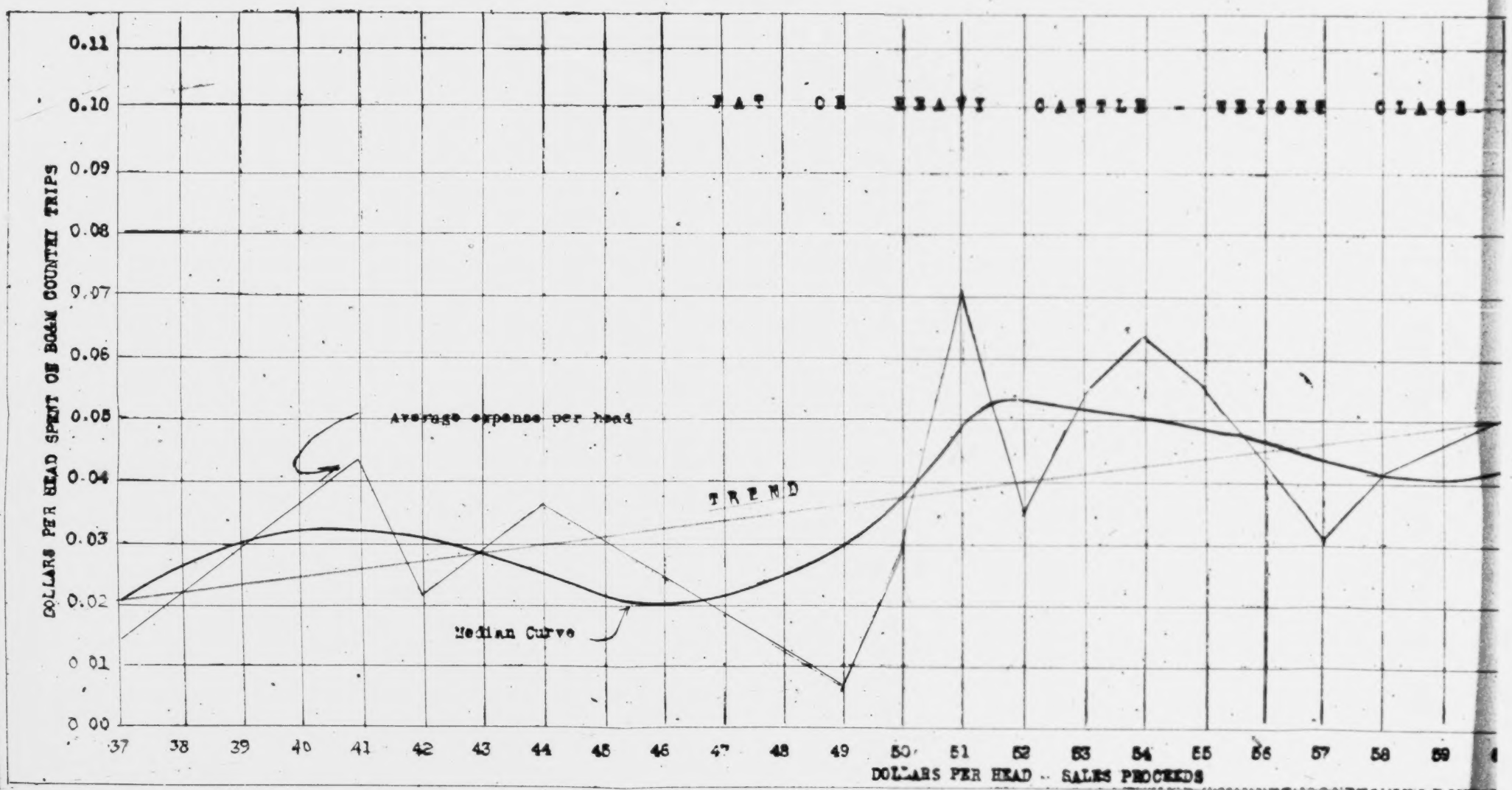
CHARTS SHOWING

TREND OF BENEFICIAL EFFECTS OF AGENCIES' COUNTRY AUXILIARY SELLING SERVICE ON CUSTOMERS' SALES PROCEEDS FROM YEARLINGS AND FAT CATTLE, KANSAS CITY MARKET, 1931.





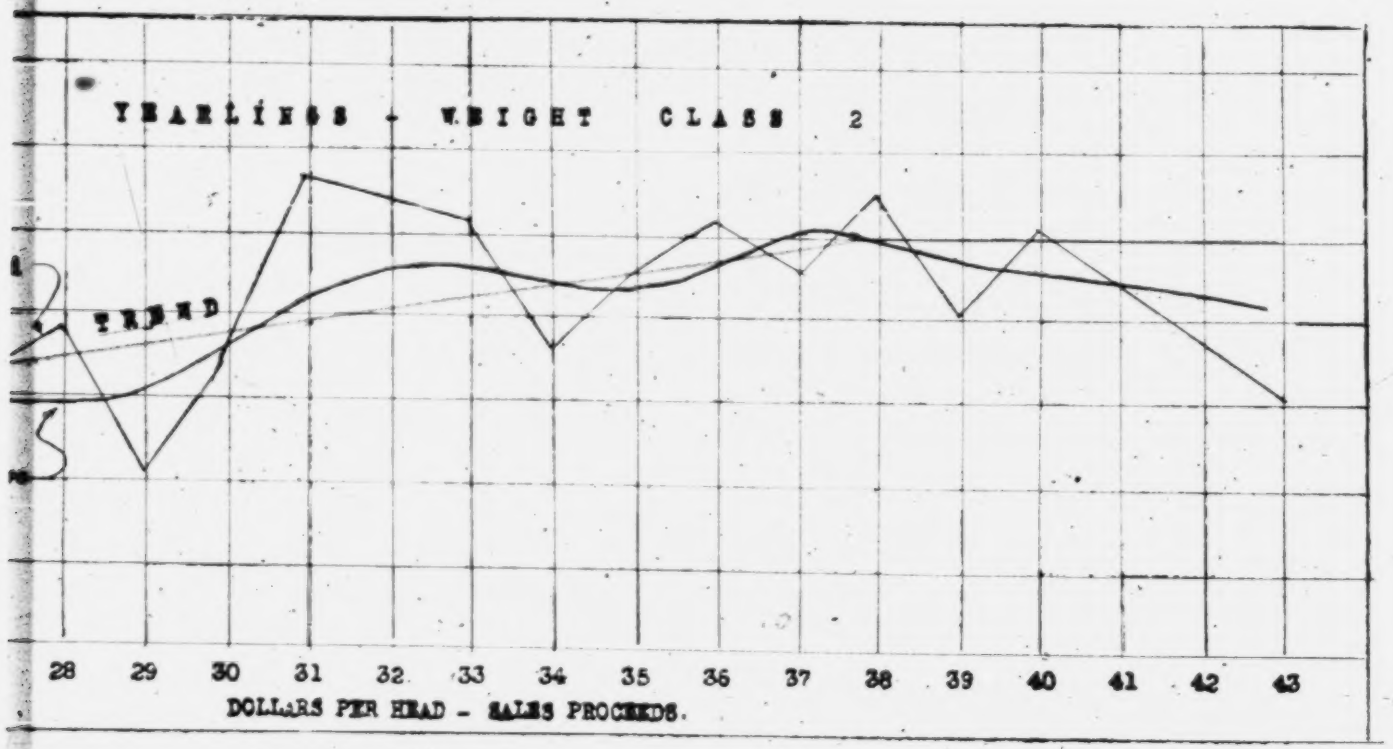

Average expense per head
TREND
Median Curve
DOLLARS PER HEAD SPENT ON BOARD
0.04
0.03
0.02
0.01
0.00
23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40
DOLLARS PER HEAD - SALES PROCEEDS.

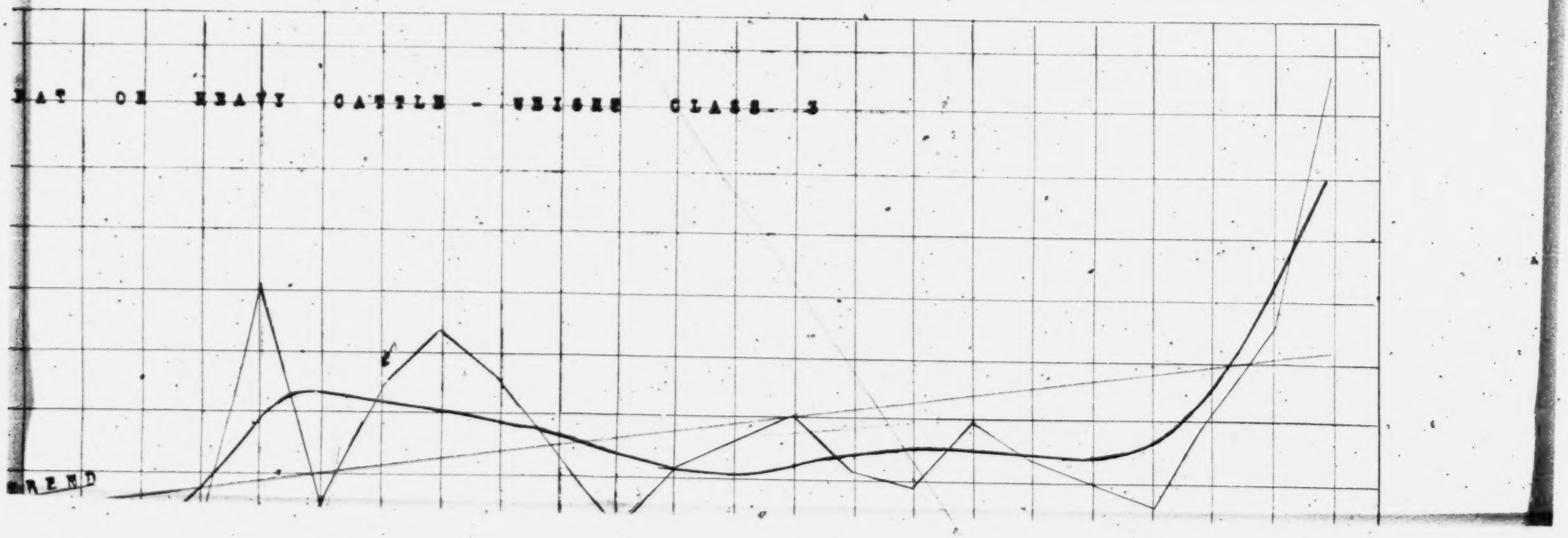

FAT OR BEAST CATTLE - WEIGHT CLASS
DOLLARS PER HEAD SPENT ON BOARD COUNTRY TRIPS
0.11
0.10
0.09
0.08
0.07
0.06
0.05
0.04
0.03
0.02
0.01
0.00
Average expense per head
TREND
Median Curve
37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59
DOLLARS PER HEAD - SALES PROCEEDS

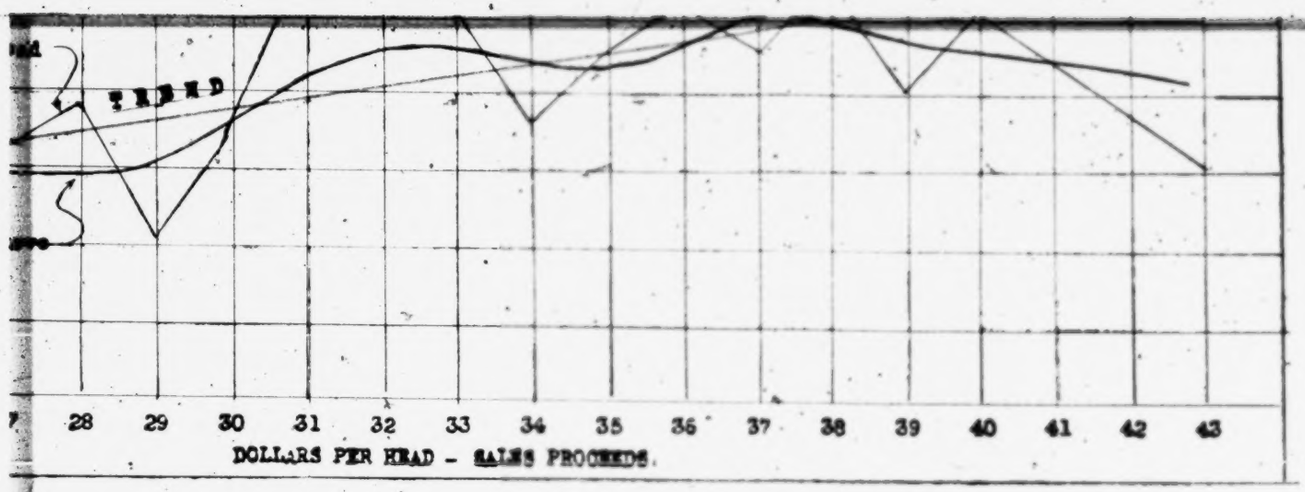
PETITIONERS' EXHIBIT NO. 11.....
WITNESS, Roberts, J. W.

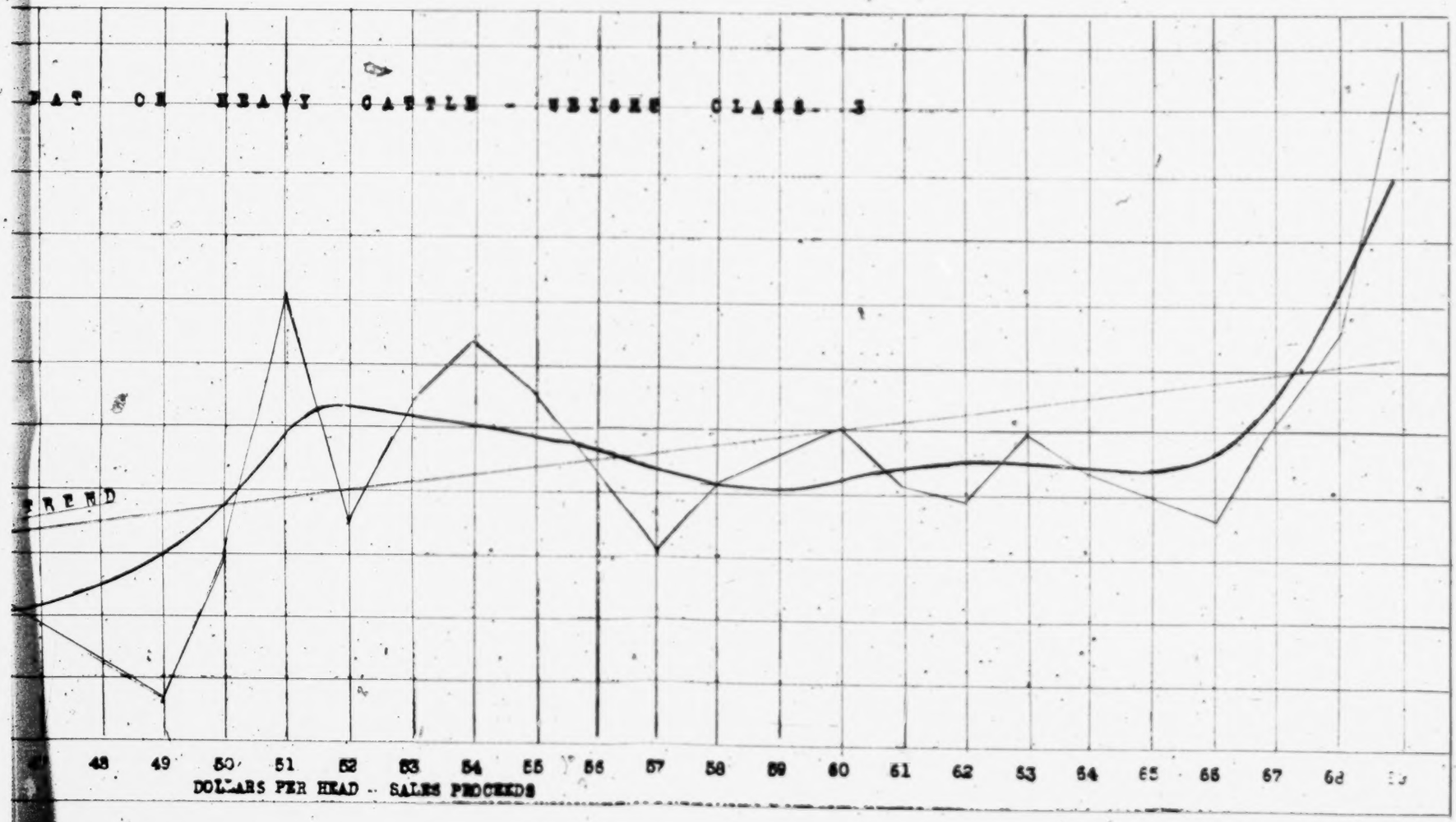
CHARTS SHOWING

BENEFICIAL EFFECTS OF AGENCIES' COUNTRY AUXILIARY SELLING SERVICE ON SALES PROCEEDS FROM YEARLINGS AND FAT CATTLE, KANSAS CITY MARKET, 1931.






TREND
28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43
DOLLARS PER HEAD - SALES PROCEEDS.


FAT ON HEAVY CATTLE - HEIFER CLASS. 3
TREND
48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68
DOLLARS PER HEAD - SALES PROCEEDS

TREND OF BENEFICIAL EFFECTS OF COUNTRY AUXILIARY SELLING SERVICE ON CUSTOMERS' SALES PROCEEDS

KANSAS CITY MARKET - 1931

YEARLING CATTLE - TARIFF WEIGHT CLASS 2

FOR ALL AGENCIES FOR WHICH GROSS SALES PROCEEDS AVAILABLE

(CHARTED ON PRECEDING SHEET)

Note: Weight Class 2 (Yearlings) Cattle represent 40% of Headage and 32% of gross sales proceeds of all cattle and calves

Avg. gross sales proceeds per head (nearest dollar)(1)	Agency No.	B&M Expense Element B Country Service Trips		Number of Head Cattle and Calves Sold		Avg. expense per head (Cents)
		For Agency	Group Total	For Agency	Group Total	
a	b	c	d	e	f	g
$ 43	9	$ 67 02	$ 67 02	2 190	2 190	3.1
40	52	839 15		18 357		
	59	7 173 47	8 012 62	138 747	157 104	5.1
39	56	869 14		28 721		
	74	411 58		6 709		
	75	984 14	2 264 87	20 183	55 613	4.1
38	19	534 32	534 32	9 927	9 927	5.4
37	23	1 610 93		24 927		
	25	1 832 86		42 309		
	67	13 16		372		
	78	398 96		6 776		
	82	3 921 96	7 777 87	94 395	168 780	4.6
35	4	2 227 77		32 979		
	6	588 78		10 177		
	34	3 071 46		27 161		
	35	3 381 17		55 608		
	46	2 777 03		99 151		
	54	5 250 92		116 497		
	63	3 976 73		87 618		
	70	2 708 00	23 981 86	32 932	462 021	5.2
35	7	461 82		15 377		
	20	1 553 71		27 785		
	26	1 577 66		28 700		
	42	4 543 53		58 657		
	48	1 078 24		36 224		
	50	313 43		14 740		
	65	986 30		36 362		
	72	31 76		1 930		
	76	59 22	10 491 69	7 725	227 500	4.6
34	13	1 933 53		58 751		
	15	91 80		12 624		
	18	2 209 08		47 215		
	30	951 17	5 185 56	22 527	141 123	3.7
33	13	2 559 11		56 597		
	14	1 715 98		35 329		
	62	1 900 80	6 175 89	26 850	118 776	5.2
32	-					
31	29	298 19		24 914		
	73	5 371 33	5 669 51	75 207	100 121	5.7
30	77	719 93	718 93	21 397	21 397	3.4
28	17	194 04		9 996		

(nearest dollar)(1)	No.	Country Service Trips		Cattle and Calves Sold		per head
		For Agency	Group Total	For Agency	Group Total	(Cents)
a	b	c	d	e	f	g
$ 43	9	$ 67 02	$ 67 02	2 190	2 190	3.1
40	52	839 15		18 387		
	59	7 173 47	8 012 62	138 747	157 104	5.1
39	56	869 14		28 721		
	74	411 59		5 709		
	75	984 14	2 264 87	20 183	55 613	4.1
38	19	534 32	534 32	9 927	9 927	5.4
37	23	1 610 93		24 927		
	25	1 832 86		42 309		
	67	13 16		372		
	78	398 96		6 776		
	82	3 921 96	7 777 87	94 396	168 780	4.6
35	4	2 227 77		32 979		
	6	588 78		10 177		
	34	3 071 46		27 161		
	35	3 381 17		55 608		
	46	2 777 03		99 151		
	54	5 250 92		116 497		
	63	3 976 73		87 518		
	70	2 708 00	23 981 86	32 932	462 021	5.2
35	7	451 82		15 377		
	20	1 563 71		27 785		
	26	1 577 66		28 700		
	42	4 543 53		58 657		
	48	1 076 24		36 224		
	50	313 43		14 740		
	68	886 30		36 362		
	72	31 76		1 930		
	76	58 22	10 491 69	7 725	227 500	4.6
34	12	1 933 53		58 751		
	15	91 80		12 624		
	18	2 209 06		47 218		
	30	951 17	5 185 56	22 527	141 123	3.7
33	13	2 559 11		56 597		
	14	1 715 98		35 329		
	62	1 900 80	6 175 89	26 850	118 776	5.2
32	-					
31	29	298 19		24 914		
	73	5 371 33	5 669 51	75 207	100 121	5.7
30	77	718 93	718 93	21 397	21 397	3.4
29	17	194 04		9 995		
	33	46 99	241 03	1 306	11 301	2.1
28	37	28 94		2 101		
	61	456 21	483 15	10 493	12 594	3.8
27	51	1 407 07	1 407 07	19 992	19 992	7.0
26						
25	66	33 92	33 92	1 631	1 631	2.1

(1) From Exhibit 249

TREND OF BENEFICIAL EFFECTS OF COUNTRY AUXILIARY SELLING SERVICE ON CUSTOMERS' SALES PROCEEDS
KANSAS CITY MARKET - 1931
FAT OR HEAVY CATTLE - TARIFF WEIGHT CLASS 3
FOR ALL AGENCIES FOR WHICH GROSS PROCEEDS AVAILABLE
(CHARTED ON PRECEDING SHEET)

Note. Weight Class 3 (fat or heavy) Cattle represent 46% of total Cattle and Calf headage and 63% of gross sales proceeds.

Average Gross Sales Proceeds Per Head (1) (Nearest Dollar)	Agency Number	BGAM Expense - Element B Country Service Trips		Number of Head Cattle & Calves Sold		All Cattle & Calves Sold Average BGAM-Element B Expense per head (Cents)
		For Agency	Group Total	For Agency	Group Total	
a	b	c	d	e	f	g
$ 69	9	$ 67 02		2 190		
	34	3 071 46	$ 3 138 48	27 161	29 351	1.7
68	23	1 610 93	1 610 93	24 927	24 927	6.5
67	8	7 173 47	7 173 47	138 747	138 747	5.2
66	19	534 32		9 927		
	56	869 14	1 403 46	28 721	38 648	3.6
64	25	1 832 86		42 309		
	63	3 976 73		87 518		
	76	58 22	5 867 81	7 725	137 552	4.3
63	75	984 14	984 14	20 183	20 183	4.9
62	4	2 227 77		32 979		
	46	2 777 03	5 004 80	99 151	132 130	3.8
61	48	1 075 24		36 224		
	54	5 260 92		116 497		
	82	3 921 96	10 248 12	94 396	247 117	4.1
60	52	839 18		18 357		
	74	411 69	1 250 74	6 709	25 066	5.0
59	18	2 209 06	2 209 06	47 215	47 215	4.7
58	6	588 78		10 177		
	20	1 553 71		27 785		
	65	886 30		36 362		
	78	398 96	3 427 75	6 775	81 100	4.2
57	12	1 933 53		58 757		
	60	313 43	2 246 96	14 740	73 497	3.1
55	14	1 715 98		35 329		
	33	46 99		1 306		
	36	3 381 17	5 144 14	55 606	92 241	5 6
54	17	194 04		9 995		
	30	951 17		22 527		
	42	4 543 53		58 657		
	62	1 900 80		26 850		
	72	31 78	7 621 32	1 930	119 959	6.4
53	13	2 659 11		56 697		
	70	2 708 00		32 932		
	77	718 93	5 986 04	21 397	110 926	5 4
52	26	1 577 66		28 700		
	29	298 18	1 875 84	24 914	53 614	3.5
51	73	5 371 33	5 371 33	75 207	75 207	7.1(2)
50	7	451 82	451 82	15 377	15 377	2.9
49	15	91 80	91 80	12 624	12 624	0.7
44	67	13 16	13 16	372	372	3.6

Note: Weight Class 3 (fat or heavy) Cattle represent 46% of total Cattle and Calf headage and 63% of gross sales proceeds.

Average Gross Sales Proceeds Per Head (1) (Nearest Dollar)	Agency Number	BGAM Expense - Element B Country Service Trips		Number of Head Cattle & Calves Sold		All Cattle & Calves Sold Average BGAM-Element B Expense per head (Cents)
		For Agency	Group Total	For Agency	Group Total	
a	b	c	d	e	f	g
$ 69	9	$ 67 02		2 190		
	34	3 071 46	$ 3 138 48	37 161	39 351	1.7
68	23	1 610 93	1 610 93	24 927	24 927	6.8
67	8	7 173 47	7 173 47	138 747	138 747	5.2
66	19	534 32		9 927		
	55	869 14	1 403 46	28 721	38 648	3.6
64	25	1 832 86		42 309		
	63	3 976 73		87 818		
	76	58 22	5 867 81	7 725	137 852	4.3
63	75	984 14	984 14	20 183	20 183	4.9
62	4	2 227 77		32 979		
	46	2 777 03	5 004 80	99 151	132 130	3.8
61	48	1 075 24		36 224		
	54	5 260 92		116 497		
	82	3 921 96	10 248 12	94 396	247 117	4.1
60	52	839 18		18 357		
	74	411 69	1 250 74	6 709	25 066	5.0
59	18	2 209 06	2 209 06	47 215	47 215	4.7
58	6	888 78		10 177		
	20	1 553 71		27 785		
	66	886 30		36 362		
	78	398 96	3 427 75	6 776	81 100	4.2
57	12	1 933 53		58 757		
	60	313 43	2 246 96	14 740	73 497	3.1
55	14	1 715 98		35 329		
	33	46 99		1 306		
	35	3 381 17	5 144 14	55 606	92 241	5 6
54	17	194 04		9 995		
	30	951 17		22 527		
	42	4 543 53		58 657		
	62	1 900 80		26 850		
	72	31 78	7 621 32	1 930	119 959	6.4
53	13	2 859 11		56 697		
	70	2 708 00		32 932		
	77	718 93	5 986 04	21 397	110 926	5 4
52	26	1 577 66		28 700		
	29	298 18	1 875 84	24 914	53 614	3.5
51	73	5 371 33	5 371 33	75 207	75 207	7.1(2)
50	7	451 82	451 82	15 377	15 377	2.9
49	16	91 80	91 80	12 624	12 624	0.7
44	67	13 16	13 16	372	372	3.6
42	66	33 92	33 92	1 631	1 631	2.1
41	61	456 21	456 21	10 493	10 493	4 3
39	51	1 407 07	1 407 07	19 992	19 992	7.0
37	37	26 94	26 94	2 101	2 101	1.3

(1) From Exhibit 249
(2) Agency 51 experience not plotted because of peculiar nature of its cattle business. Essentially it is a hog agency

PETITIONERS' EXHIBIT

WITNESS: ROBERTS

COMPARISON OF UNIT COSTS FOR SELLING AND BUYING SERVICES COMBINED (1)
PETITIONER AGENCIES COSTS AS GOVERNMENT ACCOUNTANTS COSTS (2)
FOR 9 AGENCIES HANDLING 42% and 21 AGENCIES HANDLING 74% of VOLUME ON EQUIVALENT CAR-LOT BASIS, AND FOR 59 PETITIONER AGENCIES
KANSAS CITY MARKET YEAR 1931

AGENCY NUMBER		CATTLE AND CALVES				HOGS				SHEEP		
in order as to importance of volume	Rank as to Volume (All Species)	No. of Head S & B	Average Unit Costs By Agencies	Average Unit Costs By Government Accountant	Allowed in order of June 1933 (page 79)	No. of Head S & B	Average Unit Costs By Agencies	Average Unit Costs By Government Accountant	Allowed in order of June 1933 (page 79)	No. of Head S & B	Average Unit Costs By Agencies	Average Unit Costs By Government Accountant
54	1st	185 312	54 81¢	51.13¢	44.79¢	27 122	47.83¢	27.16¢	18.10¢	591,028	05.65¢	06.11¢(-)
	2nd	164.860	61.19	51.82	44 79	70 554	37.53	21.71	18.10	205,441	07.08	08.62
	3rd	128,898	64.72	60 90	44 79	150 806	26 06	19.77	18.10	43,330	16.91	12.94
48	4th	157.432	58.65	49.55	44 79	33 474	41.88	36.66	18.10	7,795	22.39	20.83
83	5th	122 107	52.78	47.08	44 79	4 078	72.64	40.02	18.10	2,380	76.60	25.66
82	6th	110,529	69.30	57.64	44 79	30 135	37.05	25.85	18.10	2 007	34.23	13.55
84	7th	67 609	59.29	57.24	44 79	11 944	73.45	37.76	18.10	150,283	05.28	04.77(-)
51	8th	22.495	73 93	83.13	44.79	159.184	17.53	21.09	18.10	6,942	19.07	19.88
73	9th	79,012	66.20	82.12	44.79	34 425	34.60	27.45	18.10	4,056	14.87	09.55
Total 9 Agencies (42% of volume)		1.038.244	59.41¢	54 35¢	44.79¢	521 722	29.80¢	23.14¢	18.10¢	1,013,241	06.85¢	06.43¢
Including Return on Investment as Under			59.41¢	55.23¢	44.79¢		29.80¢	23.55¢	18.10¢		06.85¢	06.70¢
13	10th	63 945	60 18¢	57 34¢	44 79¢	40.816	26.27¢	22.53¢	18.10¢	5,688	22.08¢	22.98¢
12	11th	67 947	54 64	57 25	44.79	28,132	40.01	17.88(-)	18.10	3,439	22.56	15.85
35	12th	61 658	75.23	73 78	44.79	12,017	59.73	40.97	18.10	44,036	16.04	13.04
71	13th	62 038	70 06	68 42	44.79	20,323	50.26	36.75	18.10	1,414	40.67	26.74
55	14th	61 113	59 50	55 35	44.79	21,227	25.49	19.43	18.10	3,685	12.40	07.75
18	15th	59,107	56.07	47 62	44.79	11.653	42 38	20 01	18.10	3,157	10.08	07.85
42	16th	67 492	48 85	53 39	44.79	11,042	51.05	36.47	18.10	1,460	31.85	19.61
25	17th	53 312	60.49	55 56	44.79	19 201	52.27	25.91	18.10	3,673	21.66	17.63
34	18th	52 225	44.61	41 12(-)	44.79	16 312	28.77	22.48	18.10	190	51.58	30.93
14	19th	42 094	64.63	60 50	44.79	27 819	30 47	21.94	18.10	7,365	19.30	16.47
48	20th	42 369	81 33	56 27	44.79	59,052	42.40	29.38	18.10	430	41.17	23.40
70	21st	38 967	63.13	59 33	44.79	13.628	35.47	21.64	18.10	2,507	29.24	19.76
Total 21 Agencies (74% of volume)		1 710 501	59.49¢	55 50¢	44.79¢	802,294	30.11¢	22.91¢	18.10¢	1.090,288	07.68¢	07.02¢
Including Return on Investment as Under			59.49¢	56.50¢	44.79¢		30.11¢	23.38¢	18.10¢		07.68¢	07.29¢
Total 59 Petitioner Agencies		2 284 207	61 64¢	56 77¢	44.79¢	1,045 048	33.87¢	25.24¢	18.10¢	1.896 608	08.83¢	07.67¢
Including Return on Investment as Under			61.64¢	58.00¢	44.79¢		33.87¢	25.82¢	18.10¢		08.83¢	08.00¢

AGENCY NUMBER		CATTLE AND CALVES				HOGS				SHEEP		
in order as to importance of volume	Rank as to Volume (All Species)	No. of Head S & B	Average Unit Costs By Agencies	Average Unit Costs By Government Accountant	Allowed in order of June 1933 (page 79)	No. of Head S & B	Average Unit Costs By Agencies	Average Unit Costs By Government Accountant	Allowed in order of June 1933 (page 79)	No. of Head S & B	Average Unit Costs By Agencies	Average Unit Costs By Government Accountant
54	1st	195 312	54 81¢	51.13¢	44.79¢	27 122	47.83¢	27.16¢	18.10¢	591,028	05.65¢	05.11¢(-)
	2nd	164.860	61.19	51.82	44 79	70 554	37.53	21.71	18.10	205,441	07.08	08.62
	3rd	128,888	64.72	60 90	44 79	150 806	26 06	19.77	18.10	43,330	16.91	12.94
48	4th	157.432	58.65	49.55	44 79	33 474	41.88	36.66	18.10	7,795	22.39	20.83
83	5th	122 107	52.78	47.08	44 79	4 078	72.64	40.02	18.10	2,380	76.60	25.86
82	6th	110,529	69.30	57.64	44 79	30 135	37.05	25.85	18.10	2 007	34.23	13.56
84	7th	67 609	59.29	57.24	44 79	11 944	73.45	37.76	18.10	150,283	05.28	04.77(-)
51	8th	22.495	73 93	83.13	44.79	159.184	17.53	21.09	18.10	6,942	19.07	19.88
73	9th	79.012	66.20	82.12	44.79	34 425	34.60	27.45	18.10	4 .055	14.87	09.55
Total 9 Agencies (42% of volume)		1,038.244	59.41¢	54 35¢	44.79¢	521 722	29.80¢	23.14¢	18,10¢	1,013,241	06.85¢	06.43¢
Including Return on Investment as Under			59.41¢	55 25¢	44.79¢		29.80¢	23.55¢	18.10¢		06.85¢	06.70¢
13	10th	63 945	60 18¢	57 34¢	44 79¢	40.816	26.27¢	22.53¢	18.10¢	5,688	22.08¢	22.96¢
12	11th	67 947	54 64	57 25	44.79	28,132	40.01	17.88(-)	18.10	3,439	22.56	15.85
35	12th	61 658	75.23	73 78	44.79	12,017	59.73	40.97	18.10	44,036	16.04	13.04
71	13th	62 038	70 06	68 42	44.79	20,323	50.28	36.75	18.10	1,414	40.67	26.74
55	14th	61 113	59 50	55 35	44.79	21,227	25 49	19.43	18.10	9,685	12.40	07.75
18	15th	59,107	56.07	47 62	44.79	11.653	42 38	20 01	18.10	3,157	10.08	07.85
42	16th	67 492	48 85	53 39	44.79	11 042	51 05	36 47	18.10	1,460	31.85	19.61
25	17th	53 312	60.49	55 58	44.79	19 201	52.27	25.91	18.10	3,675	21.66	17.63
34	18th	52 225	44.61	41 12(-)	44 79	16 312	28.77	22.48	18.10	190	51.58	30.93
14	19th	42 094	64 63	60 50	44.79	27 819	30 47	21.94	18.10	7,365	19.30	16.47
48	20th	42 369	61 33	56 27	44.79	59,052	42.40	29.38	18.10	430	41.17	23.40
70	21st	38 967	63.13	59.33	44.79	13.628	35.47	21.64	18.10	2,507	29.24	19.76
Total 21 Agencies (74% of volume)		1 710 501	59.49¢	55 50¢	44.79¢	802,294	30.11¢	22.91¢	18.10¢	1.090,288	07.66¢	07.02¢
Including Return on Investment as Under			59.49¢	56 50¢	44.79¢		30.11¢	23.38¢	18.10¢		07.66¢	07.29¢
Total 59 Petitioner Agencies		2 284 207	61 64¢	56 77¢	44.79¢	1,045 048	33.87¢	25.24¢	18.10¢	1.896 608	08.83¢	07.67¢
Including Return on Investment as Under			61.64¢	58.00¢	44.79¢		33.87¢	25.82¢	18.10¢		08.83¢	08.00¢

(1) Selling and buying Services are combined to establish comparison because government accountant did not return unit costs for Selling and Buying Services s
(2) Government accountant unit costs here shown do not include Return on investment. The allowance for return on imputed capital computed by him, at 7% per annum reduced to head unit basis for the 3 groups of agencies, after apportionment to species on the basis of the relative allowances in the order, and the allowances contained in the June 1933 order are as follows:

For 9 agencies, government accountants figure, C&C 01.00¢ Hogs 00.41¢ Sheep 00.23¢ Allowance in order, C&C 01.50¢ Hogs 00.70¢ Sheep 00.40¢
For 21 agencies, government accountants figure, C&C 01.00¢ Hogs 00.47¢ Sheep 00.27¢ Allowance in order, C&C 01.50¢ Hogs 00.70¢ Sheep 00.40¢
For 59 agencies, government accountants figure, C&C 01.23¢ Hogs 00.58¢ Sheep 00.33¢ Allowance in order, C&C 01.50¢ Hogs 00.70¢ Sheep 00.40¢

PETITIONERS' EXHIBIT No. 12

WITNESS: ROBERTS, J. W

COMPARISON OF UNIT COSTS FOR SELLING AND BUYING SERVICES COMBINED (1)
PETITIONER AGENCIES COSTS AS GOVERNMENT ACCOUNTANTS COSTS (2)
9 AGENCIES HANDLING 42% and 21 AGENCIES HANDLING 74% of VOLUME ON EQUIVALENT CAR-LOT BASIS, AND FOR 59 PETITIONER AGENCIES
KANSAS CITY MARKET YEAR 1931

	CATTLE AND CALVES				HOGS				SHEEP			
	No. of Head	Average Unit Costs		Allowed in order of June 1933 (page 79)	No. of Head	Average Unit Costs		Allowed in order of June 1933 (page 79)	No. of Head	Average Unit Costs		Allowed in order of June 1933 (page 79)
	S & B	By Agencies	By Government Accountant		S & B	By Agencies	By Government Accountant		S & B	By Agencies	By Government Accountant	
	185 312	54.81¢	51.13¢	44.79¢	27 122	47.83¢	27.16¢	18.10¢	591,028	05.65¢	05.11¢(-)	05.80¢
	164 860	51.19	51.82	44.79	70 554	37.53	21.71	18.10	205,441	07.08	08.62	05.80
	128 898	64.72	60.90	44.79	150 806	26.06	19.77	18.10	43,330	16.91	12.94	05.80
	157 432	56.65	49.55	44.79	33 474	41.88	36.66	18.10	7,795	22.39	20.83	05.80
	122 107	52.78	47.08	44.79	4 078	72.64	40.02	18.10	2,380	76.60	25.66	05.80
	110,529	59.30	57.64	44.79	30 135	37.05	25.85	18.10	2 007	34.23	13.55	05.80
	67 609	59.29	57.24	44.79	11 944	73.45	37.76	18.10	150,283	05.28	04.77(-)	05.80
	22 495	73 93	83.13	44.79	159 184	17.53	21.09	18.10	6,942	19.07	19.88	05.80
	70 012	66.20	62.12	44.79	34 425	34.60	27.45	18.10	4,035	14.87	09.55	05.80
	1 038 244	59.41¢	54.35¢	44.79¢	521 722	29.80¢	23.14¢	18.10¢	1,013,241	06.85¢	06.43¢	05.80¢
		59.41¢	55.23¢	44.79¢		29.80¢	23.55¢	18.10¢		06.85¢	06.70¢	05.80¢
	83 245	60.18¢	57.34¢	44.79¢	40,816	26.27¢	22.53¢	18.10¢	5,688	22.08¢	22.96¢	05.80¢
	67 917	54.64	57.25	44.79	28,132	40.01	17.88(-)	18.10	3,439	22.56	15.85	05.80
	61 658	75.23	73.79	44.79	12,017	59.73	40.97	18.10	44,036	16.04	13.04	05.80
	62 038	70.06	38.42	44.79	20,323	50.28	36.75	18.10	1,414	40.67	26.74	05.80
	61 113	59.50	55.35	44.79	21,227	25.49	19.43	18.10	9,685	12.40	07.75	05.80
	59,107	56.07	47.62	44.79	11,653	42.38	20.01	18.10	3,157	10.08	07.85	05.80
	67 492	48.85	53.39	44.79	11,042	51.05	36.47	18.10	1,460	31.85	19.61	05.80
	53 312	60.49	55.56	44.79	19 201	52.27	25.91	18.10	3,673	21.66	17.63	05.80
	52 225	44.61	41.12(-)	44.79	16,312	28.77	22.48	18.10	190	51.58	30.93	05.80
	42 094	64.68	60.50	44.79	27 819	30.47	21.94	18.10	7,365	19.30	16.47	05.80
	42 359	81.33	56.27	44.79	59,052	42.40	29.38	18.10	430	41.17	23.40	05.80
	38 967	63.13	59.33	44.79	13,628	35.47	21.64	18.10	2,507	29.24	19.76	05.80
	1 710 501	59.49¢	55.50¢	44.79¢	802,294	30.11¢	22.91¢	18.10¢	1,090,288	07.66¢	07.02¢	05.80¢
		59.49¢	56.50¢	44.79¢		30.11¢	23.38¢	18.10¢		07.66¢	07.29¢	05.80¢
	2 284 207	61.64¢	56.77¢	44.79¢	1,045 048	33.87¢	25.24¢	18.10¢	1.896.608	08.83¢	07.67¢	05.80¢
		61.64¢	58.00¢	44.79¢		33.87¢	25.82¢	18.10¢		08.83¢	08.00¢	05.80¢

to ies)	CATTLE AND CALVES				HOGS				SHEEP			
	No. of Head	Average Unit Costs		Allowed in order of June 1933 (page 79)	No. of Head	Average Unit Costs		Allowed in order of June 1933 (page 79)	No. of Head	Average Unit Costs		Allowed in order of June 1933 (page 79)
	S & B	By Agencies	By Government Accountant		S & B	By Agencies	By Government Accountant		S & B	By Agencies	By Government Accountant	
	185 312	54 81¢	51.13¢	44.79¢	27 122	47.83¢	27.16¢	18.10¢	591,028	05.65¢	05.11¢(-)	05.80¢
	164.860	61.39	51.82	44 79	70 554	37.53	21.71	18.10	205,441	07.08	08.62	05.80
	128,888	64.72	60 90	44 79	150 806	26 06	19.77	18.10	43,330	16.91	12.94	05.80
	157.432	58.65	49.55	44 79	33 474	41.88	36.66	18.10	7,795	22.39	20.83	05.80
	122 107	52.78	47.08	44 79	4 078	72.64	40.02	18.10	2,380	76.60	25.66	05.80
	110,529	69.30	57.64	44 79	30 135	37.05	25.85	18.10	2 007	34.23	13.55	05.80
	67 609	59.29	57.24	44 79	11 944	73.45	37.76	18.10	150,283	05.28	04.77(-)	05.80
	22.495	73 93	83.13	44.79	159.184	17.53	21.09	18.10	6,942	19.07	19.88	05.80
	79,012	66.20	82.12	44.79	34 425	34.60	27.45	18.10	4 035	14.87	09.55	05.80
	1.038.244	59.41¢	54 35¢	44.79¢	521 722	29.80¢	23.14¢	18.10¢	1,013,241	06.85¢	06.43¢	05.80¢
er		59.41¢	55 23¢	44.79¢		29.80¢	23.55¢	18.10¢		06.85¢	06.70¢	05.80¢
	63 945	60 18¢	57 34¢	44 79¢	40.816	26.27¢	22.53¢	18.10¢	5,688	22.08¢	22.96¢	05.80¢
	67 947	54 64	57 25	44.79	28,132	40.01	17.88(-)	18.10	3,439	22.56	15.85	05.80
	61 658	75.23	73 78	44.79	12,017	59.73	40.97	18.10	44,036	16.04	13.04	05.80
	62 038	70 06	68 42	44.79	20,323	50.28	36.75	18.10	1,414	40.67	26.74	05.80
	61 113	59 50	55 35	44.79	21 227	25 49	19.43	18.10	9,685	12.40	07.75	05.80
	59,107	56.07	47 62	44.79	11.653	42 38	20 01	18.10	3,157	10.08	07.85	05.80
	67 492	48 85	53 39	44.79	11,042	51.05	36.47	18.10	1,460	31.85	19.61	05.80
	53 312	60.49	55 56	44.79	19 201	52.27	25.91	18.10	3,673	21.66	17.63	05.80
	52 225	44.61	41 12(-)	44 79	16 312	28.77	22.48	18.10	190	51.58	39.93	05.80
	42 094	64.63	60 50	44.79	27 819	30 47	21.94	18.10	7,365	19.30	16.47	05.80
	42 359	61 33	56 27	44.79	59,052	42.40	29.38	18.10	430	41.17	23.40	05.80
	38 967	63.13	59 33	44.79	13.628	35.47	21.64	18.10	2,507	29.24	19.76	05.80
	1 710 501	59.49¢	55 50¢	44.79¢	802,294	30.11¢	22.91¢	18.10¢	1.090,288	07.66¢	07.02¢	05.80¢
er		59.49¢	56 50¢	44 79¢		30.11¢	23.38¢	18.10¢		07.66¢	07.29¢	05.80¢
	2 284 207	61 64¢	56 77¢	44.79¢	1,045 048	33.87¢	25.24¢	18.10¢	1.896 608	08.83¢	07.67¢	05.80¢
er		61.64¢	58.00¢	44.79¢		33.87¢	25.82¢	18.10¢		08.83¢	08.00¢	05.80¢

Services are combined to establish comparison because government accountant did not set up unit costs for Selling and Buying Services separately.
tant unit costs here shown do not include Return on investment. The allowance for return on invested capital computed by him, at 7%
d to head-unit basis for the 3 groups of agencies, after apportionment to species on the basis of the relative allowances in the order,
contained in the June 1933 order, are as follows:
es, government accountants figure, C&C 00.88¢ Hogs 00.41¢ Sheep 00.23¢ Allowance in order, C&C 01.50¢ Hogs 00.70¢ Sheep 00 40¢
es, government accountants figure, C&C 01.00¢ Hogs 00.47¢ Sheep 00.27¢ Allowance in order, C&C 01 50¢ Hogs 00 70¢ Sheep 00 40¢
es, government accountants figure, C&C 01.23¢ Hogs 00.58¢ Sheep 00 33¢ Allowance in order, C&C 01.50¢ Hogs 00.70¢ Sheep 00.40¢

B.A.I. DOCKET NO. 311

CONFISCATORY ASPECTS OF THE JUNE 14 1933 ORDER'S RATES AS TO THE ELEVEN LEADING FIRMS
AND AS TO THE TWENTY-THREE LEADING FIRMS
Per page 39 of Order
CREDITS IN RED

	CATTLE & CALVES	S W I N E	S H E E P	
11 FIRMS:				
Government's costs, exclusive of return on investment	$ 679 501 58	$ 180 642 09	$ 81 385 28	$
Less amounts included as compensation for owner services	119 715 43	25 958 38	1 488 99	
Government costs, exclusive of owner compensation and return	$ 559 786 15	$ 154 683 71	$ 79 896 29	$
REVENUE UNDER JUNE 14, 1933, PRESCRIBED RATES (2nds and Buying at present rates)	$ 566 177 36	$ 155 702 77	$ 82 406 39	$
Return to owner for personal services and return on investment	$ 6 391 21	$ 980 94	$ 2 510 10	
Less Government allowance in order for return on investment	-	-	-	$
Remainder to compensate owner for services rendered	-	-	-	
23 FIRMS:				
Government costs, exclusive of return on investment	$1 064 461 09	$ 243 754 63	$ 92 694 42	$
Less amounts included as compensation for owner services	219 357 21	32 400 87	2 280 00	
Government costs, exclusive of owner compensation and return	$ 845 103 78	$ 211 353 76	$ 90 414 42	$
REVENUE UNDER JUNE 14, 1933, PRESCRIBED RATES (2nds and Buying at present rates)	$ 880 946 09	$ 199 413 80	$ 91 517 55	$
Return to owner for personal services and return on investment	$ 35 842 31	$ 11 939 96	$ 1 103 13	$
Less Government allowance in order for return on investment	-	-	-	$
Remainder to compensate owners for services rendered	-	-	-	

W Roberts
Chicago, Ill
July 1, 1933

Ref No 13

B.A.I. DOCKET NO. 511

CONFISCATORY ASPECTS OF THE JUNE 14 1933 ORDER'S RATES AS TO THE ELEVEN LEADING FIRMS
AND AS TO THE TWENTY-THREE LEADING FIRMS
Per page 39 of Order
CREDITS IN RED

	CATTLE & CALVES	S W I N E	S H E E P	ALL SPECIES
exclusive of return on investment	$ 679 501 58	$ 180 642 09	$ 81 385 28	$ 941 528 95
ed as compensation for owner services	119 715 43	25 958 38	1 488 99	147 162 80
xclusive of owner compensation and return	$ 559 786 15	$ 154 683 71	$ 79 896 29	$ 794 366 15
14. 1933. PRESCRIBED RATES (2nds and Buying at present rates)	$ 566 177 36	$ [illegible] 77	$ 82 406 39	$ [illegible] 52
personal services and return on investment.	6 391 21	$ 980 94	2 510 10	7 [illegible] 37
owance in order for return on investment	-	-	-	$ 28 560 65
ate owner for services rendered.	-	-	-	NONE

xclusive of return on investment	$1 064 461 09	$ 243 754 63	$ 92 694 42	$ 1 400 910 14
ed as compensation for owner services	219 357 21	32 400 87	2 280 00	254 038 08
xclusive of owner compensation and return	$ 845 103 78	$ 211 353 76	$ 90 414 42	$ 1 146 872 06
14, 1933, PRESCRIBED RATES (2nds and Buying at present rates)	$ 880 966 09	$ 199 413 80	$ 91 517 55	$ 1 171 897 44
personal services and return on investment	$ 35 862 21	$ 11 939 98	$ 1 103 13	$ 25 025 38
owance in order for return on investment	-	-	-	$ 40 552 32
ate owners for services rendered	-	-	-	NONE

FILE COPY

Office Supreme Court, U.S.
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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 686

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AS TO JURISDICTION.

JOHN B. GAGE,
Counsel for Appellants.

B.A.I. DOCKET NO. 311

CONFISCATORY ASPECTS OF THE JUNE 14 1933 ORDER'S RATES AS TO THE ELEVEN LEADING FIRMS AND AS TO THE TWENTY-THREE LEADING FIRMS

Per page 39 of Order

CREDITS IN RED

	CATTLE & CALVES	S W I
11 FIRMS:		
Government's costs, exclusive of return on investment	$ 679 501 58	$ 180 6
Less amounts included as compensation for owner services	119 715 43	25 5
Government costs, exclusive of owner compensation and return	$ 559 786 15	$ 154 6
REVENUE UNDER JUNE 14, 1933, PRESCRIBED RATES (2nds and Buying at present rates)	$ 566 177 36	$ 157 7
Return to owner for personal services and return on investment	$ 6 391 21	$ 1
Less Government allowance in order for return on investment	-	
Remainder to compensate owners for services rendered	-	
23 FIRMS:		
Government costs, exclusive of return on investment	$1 064 461 09	$ 243 3
Less amounts included as compensation for owner services	219 357 21	32 4
Government costs, exclusive of owner compensation and return	$ 845 103 78	$ 211 3
REVENUE UNDER JUNE 14, 1933, PRESCRIBED RATES (2nds and Buying at present rates)	$ 880 966 09	$ 199 4
Return to owner for personal services and return on investment	$ 35 862 21	$ 11 1
Less Government allowance in order for return on investment	-	
Remainder to compensate owners for services rendered	-	

J W Roberts
Chicago, Ill

Ex No 13

B.A.I. DOCKET NO. 311

S OF THE JUNE 14 1933 ORDER'S RATES AS TO THE ELEVEN LEADING FIRMS
AND AS TO THE TWENTY-THREE LEADING FIRMS
*Per page 39 of Order
CREDITS IN RED

	CATTLE & CALVES	S W I N E	S H E E P	ALL SPECIES
ent	$ 679 501 58	$ 180 642 09	$ 81 385 28	$ 941 528 95
rvices	119 715 43	25 958 38	1 488 99	147 162 80
and return	$ 559 786 15	$ 154 683 71	$ 79 896 29	$ 794 366 15
le and Buying at present rates)	$ 566 177 36	$ 152 702 77	$ 82 406 39	$ 803 284 52
on investment.	6 391 21	$ 980 94	2 510 10	7 920 37
investment	-	-	-	$ 28 560 65
red.	-	-	-	NONE

nt	$1 064 461 09	$ 243 754 63	$ 92 694 42	$ 1 400 910 14
ervices	219 357 21	32 400 87	2 280 00	254 038 08
and return	$ 845 103 78	$ 211 353 76	$ 90 414 42	$ 1 146 872 06
le and Buying at present rates)	$ 880 966 09	$ 199 413 80	$ 91 517 55	$ 1 171 897 44
on investment	$ 35 862 31	$ 11 939 96	$ 1 103 13	$ 25 025 38
investment	-	-	-	$ 40 552 32
red	-	-	-	NONE

FILE COPY

Office Supreme Court, U. S.
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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 686

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AS TO JURISDICTION.

JOHN B. GAGE,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 686

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE.

(STATEMENT OF APPELLANTS PURSUANT TO PROVISIONS OF RULE XII OF THE RULES OF THE SUPREME COURT OF THE UNITED STATES SHOWING THAT THAT COURT HAS JURISDICTION TO REVIEW UPON APPEAL THE FINAL JUDGMENT OR DECREE OF THE DISTRICT COURT.)

I.

These fifty individual suits, consolidated through stipulation of parties for the purpose of presentation, trial and other proceedings therein, arose to suspend and restrain the enforcement, operation and execution of an Order of

the Secretary of Agriculture of the United States dated June 14, 1933, entered in a proceeding entitled "Secretary of Agriculture *v.* L. B. Andrews, doing business as L. B. Andrews Live Stock Commission Company, et al.," Bureau of Animal Industry, Docket No. 311, instituted under the Packers and Stockyards Act, 1921 (Title 7 U. S. Code, Chap. 9, Sections 181-229; Chap. 64, 42 Stat. 159 et seq.). Section 316 of that Act (Title 7, U. S. Code, Section 217) provides:

> "217. Proceedings for suspension of orders. For the purposes of sections 201 to 217, inclusive of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217 inclusive of this chapter, and to any person subject to the provisions of Sections 201 to 217, inclusive of this chapter. (Aug. 15, 1921, c. 64, Sec. 316, 42 Stat. 168.)"

The applicable provisions of the laws relating to the suspending or restraining the enforcement of orders of the Interstate Commerce Commission, made by the statute quoted, also applicable to suspending or restraining the enforcement of Orders of the Secretary of Agriculture under Packers and Stockyards Act, 1921, are found in Title 28, U. S. Code, Section 47 (Judicial Code, Section 24 g, Oct. 22, 1913 c. 32, 32 Stat. 220). This Act provides for a hearing by a three-judge court upon an application for an interlocutory injunction to sustain or restrain the enforcement of Orders of the Secretary of Agriculture under Packers and Stockyards Act, 1921; and further provides:

> "An appeal may be taken direct to the Supreme Court of the United States from the order granting or

denying, after notice and hearing, an interlocutory injunction * * *".

The Section further provides:

"And upon the final hearing of any suit brought to suspend or set aside, in whole or in part, any order of said commission, the same requirement as to judges and the same procedure as to exception and appeal shall apply."

Section 345, Title 28 U. S. Code (Judicial Code, Section 238 amended) provides that the Supreme Court has appellate jurisdiction to review the final decree of a District Court as provided in Section 47 of Title 28, referred to and quoted from above.

II.

The constitutionality of the provisions of Packers and Stockyards Act, 1921, is not involved.

III.

The date of the final decree and order sought to be reviewed is June 15, 1935, and the date upon which the application for appeal is presented is June 20, 1935.

IV.

The Secretary of Agriculture, under the provisions of the Packers and Stockyards Act, 1921 (42 Stat. L. 163) in the order drawn in question in this case entered on the 14th day of June, 1933, sought to exercise authority granted to him under the provisions of said Act by holding that certain rates and charges made and filed with him by the appellants as market agencies at the Kansas City Stock Yards, in Kansas City, Missouri, were unjust and unreasonable and by ordering that certain rates and charges set

out in said order and found by him to be just and reasonable should constitute the maximum rates and charges to be on and after July 24, 1933, collected and charged by such market agencies for services rendered at said Kansas City Stock Yards in the business of buying or selling livestock in commerce. The appellants instituted individual suits herein to enjoin and restrain the enforcement of said order by the defendants. A statutory three-judge court was assembled. On July 22, 1933, the District Court entered an interlocutory judgment restraining the enforcement of said order. On final hearing, the petitions of appellants were dismissed. It is claimed by the appellants, and each of them, that the District Court erred in striking out, upon motion of the appellees, allegations in the several petitions of appellants challenging the legality of the manner in which purported hearings in the proceedings before the Secretary of Agriculture entitled "Bureau of Animal Industry, Docket No. 311" were conducted, and alleging that the several petitioners were denied full hearings before the Secretary as provided for and required by the Packers and Stockyards Act, 1921; erred in holding that the conclusions expressed in said order of the Secretary of Agriculture were based upon proper findings of fact made by the Secretary of Agriculture in said order; erred in holding that such findings of fact as were contained in said order of the Secretary of Agriculture were made upon any substantial evidence submitted to the Secretary; erred in failing to hold that the Secretary in said order arbitrarily ignored relevant and material facts appearing from the undisputed evidence taken at the hearings before the Secretary, the effect of the consideration of which clearly established the unjustness, unreasonableness and illegality of the maximum rates and charges denominated as just and reasonable in said order; erred in failing to hold that the conclusions expressed in said order of the Secretary of

Agriculture were based on erroneous conceptions of established rules of law and in upholding a method of determining the justness and reasonableness of rates and charges of the appellants predicated upon a purely hypothetical consideration of conditions that might exist in the business engaged in by appellants if competition between appellants for business as among themselves and with others were eliminated and the business of each and all of appellants consolidated and managed in the manner suggested in the opinion of the court; erred in holding that the effect of such order, in determining the reasonable costs to each of the appellants in operating their respective business did not substitute the judgment of the Secretary of Agriculture for that of appellants in the management of their respective businesses; erred in failing to hold as arbitrary and capricious the action of the Secretary excluding in his findings of reasonable costs expenses amounting to thousands of dollars actually sustained by each plaintiff and without evidence that any of the expenses actually incurred by appellants were unnecessary or were incurred as the result of inefficiency or improvidence of appellants, or any of them; erred in holding that the effect of said order did not deprive appellants, and each of them, of their property or livelihood without due process of law in violation of rights guaranteed to them and each of them under the Fifth Amendment to the Constitution of the United States; and erred in failing to find that the said order of the Secretary of Agriculture drawn in question was arbitrary, unjust and unreasonable, and hence, illegal and void. The prayer for reversal is deemed by the appellants to be justified under the decisions of the Supreme Court of the United States in *Tagg Brothers & Moorhead* v. *United States,* 280 U. S. 420, 74 L. Ed. 524, and *West Ohio Gas Company* v. *Public Utilities Commission of Ohio,* 55 Sup. Ct. 316, 324, 79 L. Ed., Adv. Sheets 274, decided January 7, 1935, and

other pertinent decisions of the Supreme Court of the United States.

V.

The cases believed to sustain the jurisdiction of the Supreme Court of the United States are *Tagg Brothers and Moorhead* v. *United States,* 280 U. S. 420, 74 L. Ed. 524, and *Stafford* v. *Wallace,* 258 U. S. 495, 512, 66 L. Ed. 735, 740.

Respectfully submitted,

JOHN B. GAGE,
Attorney for Appellants.

(7337-C)

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CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

October Term, 1935

No. 686

FRED O. MORGAN, doing business as FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA and THE SECRETARY OF AGRICULTURE.

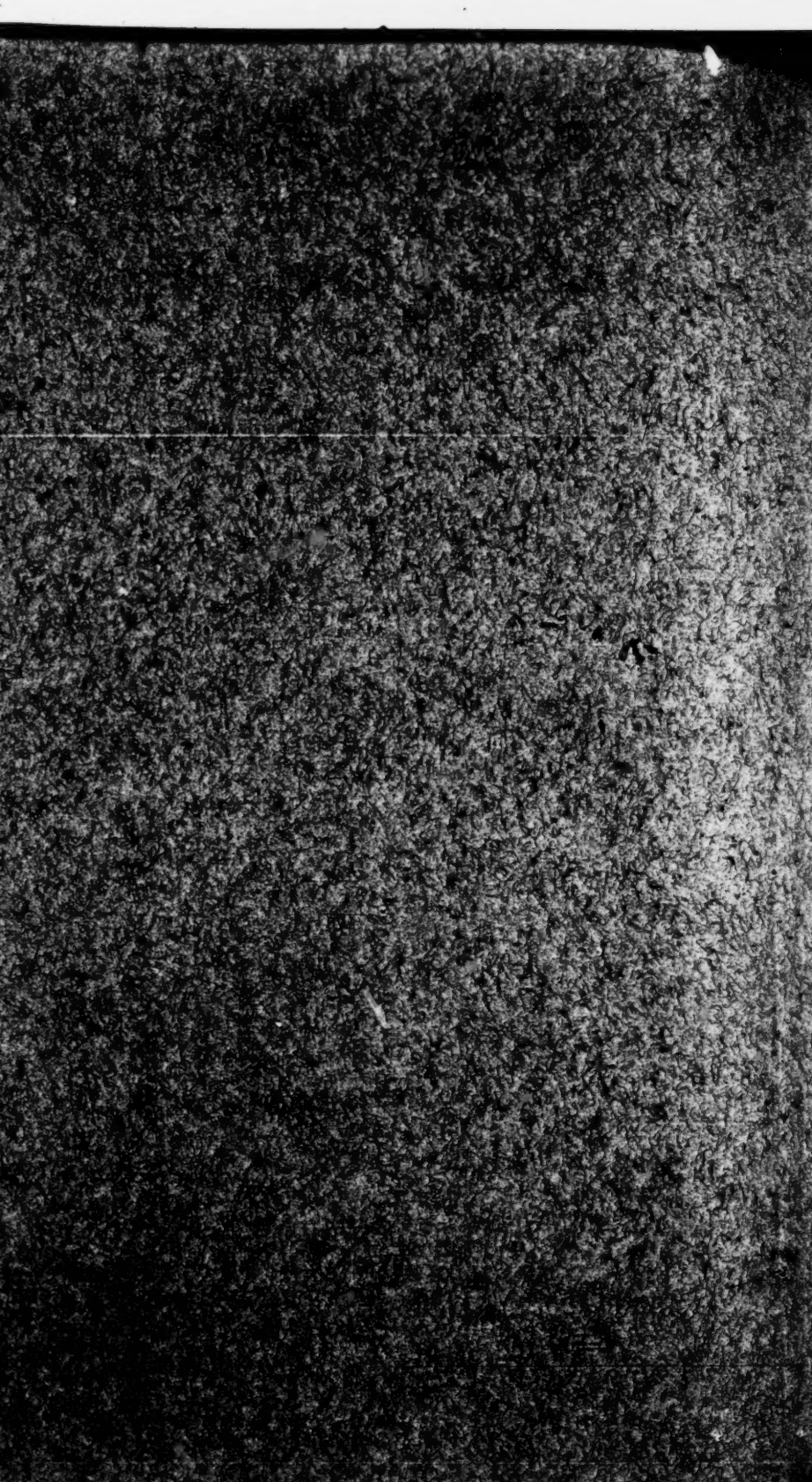
APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

MOTION TO SUBSTITUTE PARTY APPELLANT

EDWIN R. MORRISON,
Counsel for New Amsterdam Casualty Company.

CHALLEN B. ELLIS,
Of Counsel.

EVNON PRINTING COMPANY, INC., WASHINGTON, D. C.



IN THE

Supreme Court of the United States

October Term, 1935

No. 686

FRED O. MORGAN, doing business as FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL.,

Appellants,

vs.

THE UNITED STATES OF AMERICA and THE SECRETARY OF AGRICULTURE.

MOTION TO SUBSTITUTE PARTY APPELLANT

Comes now New Amsterdam Casualty Company, a corporation organized and existing under the laws of the State of New York and a citizen and resident of said State, by and through its duly authorized attorney, Edwin R. Morrison, a member of the Bar of this Court, and respectfully states to the Court that the appellant, Harry J. Kennaley, doing business as Harry Kennaley Commission Company, the plaintiff in case Docket No. 2356 in the United States District Court and one of the appellants herein, pursuant to the stipulation for consolidation entered into by the parties in said cause, has duly assigned unto said New Amsterdam Casualty Company all his right, title and interest in and to the certain moneys impounded with the Clerk of the District Court of the Western District of Missouri by said appellant, as shown by

the certificate of said Clerk executed as of the 23d day of March, 1936, and filed herein, to amount of the sum of $3,064.70; that such certificate shows that the date of the last deposit made by the said appellant with the Clerk of said court was the 8th day of February, 1935. This petitioner further states that it was the surety upon the bond of said Harry J. Kennaley filed with the Kansas City Livestock Exchange and the Secretary of Agriculture of the United States, one of the defendants herein; that said bond was conditioned upon the faithful and prompt remittance of proceeds of the sale of livestock as required by law to the owners of such livestock; that the said appellant had failed to enter upon his books and upon the statements submitted from time to time to said Kansas City Livestock Exchange all of his liabilities, and that his said books and financial statements failed to reveal correctly either to said E[illegible]ge or to the accountants for said Secretary of Agriculture called upon to examine his books all of the expenditures actually incurred by said appellant in the operation of his business; that by reason thereof he became in default of compliance with the conditions of said bond to the extent of an amount in excess of the sum of $15,000, and the said New Amsterdam Casualty Company, petitioner herein, as surety upon said bond, paid an amount in excess of said sum of $15,000 to those for whose benefit said bond was executed; that said New Amsterdam Casualty Company claims an interest in and to said impounded deposit by reason of the facts herein stated and the assignment by said appellant, Harry J. Kennaley, of all his right, title and interest therein; that an appeal is not moot as to said appellant, although he has discontinued business as a market agency, but exists by reason of the interest of this petitioner in and to the moneys aforesaid so impounded by said appellant with the Clerk of said District Court.

WHEREFORE, this petitioner prays that it be substi-

tuted as one of the appellants herein for and in the place and stead of Harry J. Kennaley, appellant herein, in respect of case Docket No. 2356, in equity, as filed in the District Court for the Western District of Missouri pending herein on appeal.

EDWIN R. MORRISON,
Counsel for New Amsterdam Casualty Company.

CHALLEN B. ELLIS,
Of Counsel.

The order of substitution as above prayed for is consented to on behalf of Harry J. Kennaley, one of the appellants herein.

Dated this 7th day of April, 1936.

JOHN B. GAGE,
FREDERICK H. WOOD,
Attorneys for Harry J. Kennaley, Appellant.

The order of substitution as above prayed for is consented to on behalf of the appellees.

Dated this 9th day of April, 1936.

STANLEY REED,
Solicitor General.

APPENDIX

CERTIFICATE OF CLERK OF DISTRICT COURT

UNITED STATES OF AMERICA, S.C.T.

I, A. L. ARNOLD, Clerk of the District Court of the United States, for the Western Division of the Western District of Missouri, do hereby certify that the following tabulation contains a true and correct list of the names of the various petitioners in F. O. Morgan, doing business as F. O. Morgan Sheep Commission Company, et al., plaintiffs, v. United States of America and Secretary of Agriculture, defendants, in Equity No. 2328 and related cases Nos. 2329-2378, inclusive, who have discontinued making the deposits of money with the Clerk of this Court which were required under orders of this Court in these cases, together with the respective dates of last deposit by such respective petitioners and the total amount deposited with the Clerk of this Court by such respective petitioners:

Name of Petitioner.	Date of Last Deposit	Total deposits Made
Fred O. Morgan doing business as Fred O. Morgan Sheep Commission Co....	Jan. 29, 1935	$ 117.56
H. H. Kleeker, doing business as Hinie Kleeker Sheep Commission Co.....	Feb. 12, 1935	926.20
Henry F. Carnes doing business as The Henry F. Carnes Livestock Commission Company	Jan. 7, 1936	477.00
Drumm-Standish Commission Company, a Corporation	Mch. 9, 1936	2843.30
Link Faskin, doing business as Link Faskin Livestock Commission Co.....	No deposits made	
Harry J. Kennaley, doing business as The Kennaley Commission Company.....	Feb. 8, 1935	3064.70
Jay D. McCormick, doing business as Jay D. McCormick Livestock Com. Co.....	Jan. 28, 1936	889.84
Ben L. Welch, doing business as Welch Livestock Commission Co.....	Jan. 7, 1936	511.48
W. E. Curtis, doing business as W. E. Curtis & Co.....	May 15, 1934	828.80
Walter G. Land and John E. Maze, Partners, doing business as Walter G. Land Livestock Commission Co...	Jan. 2, 1935	756.78.
Less White, doing business as Less White Livestock Commission Co.....	Dec. 31, 1935	1917.71

WITNESS MY HAND as Clerk and the Seal of this Court. Done in my office at Kansas City, Missouri, this 23rd day of March, A. D. 1936.

A. L. ARNOLD,
Clerk of the United States District Court.

By H. C. SPAULDING,
Deputy Clerk.

(SEAL OF U. S. DISTRICT COURT)

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Supreme Court of the United States

OCTOBER TERM, 1935

No. 686

FRED O. MORGAN, doing business as FRED O. MORGAN SHEEP COMMISSION COMPANY *et al.*,

Appellants,

vs.

THE UNITED STATES OF AMERICA and THE SECRETARY OF AGRICULTURE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR APPELLANTS

OPINIONS BELOW.

The initial opinion of the court below appears in the Record at pages 145-154 and is reported in 8 F. Supp. 766. The concurring opinion appears in the Record at pages 154-157 and is reported in 8 F. Supp. 771. The opinion of the majority of the court on the petition for rehearing appears in the Record at pages 164-166 and is unreported.

JURISDICTION.

The joint and final decree of the court below was entered on June 20, 1935 (R. 166) and appeal was allowed on June 29, 1935 (R. 177). The jurisdiction of this Court is invoked under Section 238(4) of the Judicial Code as

amended by the Act of February 13, 1925, c. 229, 43 Stat 936, 938.

THE STATUTE INVOLVED.

This appeal involves the validity of a rate order made by the Secretary of Agriculture under the Packers and Stockyards Act of 1921, as amended (42 Stat. 159).

Sec. 302 (a) of this Act defines a stockyard as follows:

> "When used in this title the term 'stockyard' means any place, establishment, or facility commonly know as stockyards, conducted or operated for compensation or profit *as a public market*, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce. This title shall not apply to a stockyard of which the area normally available for handling live stock, exclusive of runs, alleys, or passage ways, is less than twenty thousand square feet." [Emphasis ours.]

Sec. 305 provides that

> "All rates or charges made for any stockyard services furnished at a stockyard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful."

By Sec. 309 the Secretary is authorized to entertain a complaint that a stockyard owner or market agency has violated Sec. 305; and Sec. 310 provides:

> "SEC. 310. Whenever after full hearing upon a complaint made as provided in section 309, or after

full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

"(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and non-discriminatory to be thereafter followed; and

"(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed."

The statute does not authorize the Secretary to regulate either the number of market agencies at any given market or the conduct of their business. Prior to its enactment market agencies (commission men) at Kansas City and other stockyards were practically required, except in unusual circumstances, to be members of the livestock exchanges existing at such markets. One of the purposes of the statute was to remove this condition and provide for the maintenance of a free and competitive market to be con-

ducted by as many market agencies as saw fit to engage therein without the restriction of membership in the Exchange. Nothing in the nature of a certificate of public convenience and necessity is required for entry into or conduct of the business, and the Secretary is not authorized either to limit the number of market agencies or to refuse permits to those applying therefor. The only statutory requirement for doing business as a market agency is that the agency shall be registered with the Secretary "under such rules and regulations as the Secretary may prescribe."[1] The only regulation prescribed by the Secretary, in addition to giving certain information, is that the agency shall file a bond to secure the performance of its obligations.[2] The Act provides that every stockyard owner shall "furnish upon reasonable request, without discrimination, reasonable stockyard services at such stockyard."[3] Furthermore, an order of the Secretary requiring the Exchange to permit cooperatives to use the facilities of the Exchange upon the same terms as used by the members of the Exchange in effect makes the use of the Exchange facilities open to all registered market agencies.[4] The effect of the statute and of the Secretary's interpretation thereof[5] is not only to permit but to encourage participation in the business by any one who desires to participate therein for the purpose of maintaining a free competitive market without governmental restriction as to the number of agencies and without governmental regulation as to the manner in which the business is to be conducted, except for the purpose of preventing discrimination.

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[1]Sec. 303
[2]Reg. 17 (b).
[3]Sec. 304.
[4]R. 228-230; Res. Ex. 3.
[5]FF. 129, R. 130. The symbol "FF." refers to the findings of fact in the Secretary's order.

SUMMARY STATEMENT OF THE CASE AND OF APPELLANTS' PRIMARY CONTENTIONS.

The appellants are fifty market agencies engaged in selling or in selling and buying livestock as agents for others at the Kansas City Public Stockyards. They appeal from a joint and final decree of the District Court, as specially constituted, dismissing their petitions in fifty suits[1] brought to enjoin an order entered by the Secretary of Agriculture on June 14, 1933, under Sec. 310 of the Packers and Stockyards Act of 1921 holding existing commission rates unreasonable and unjustly discriminatory and prescribing lower maximum rates (R. 127-130).

While the challenged order fixes *maximum* charges both for buying and for selling, the appellants do not attack the maximum buying charges, but on the contrary take the position that they are, in fact, too high, being mere "paper rates" which cannot in practice be charged and are not being charged by the appellants.[2] They assert that there was no evidence in the record justifying the increase in the maximum buying charges or for the finding that the present rates for this service were unreasonable or discriminatory. Selling charges of appellants are, in practice, uniform; but this is not true as respects buying charges.

The principal business of all of the appellants is sell-

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[1]The causes were consolidated for purposes of trial and further proceedings, without prejudice to the preservation of the individual rights of the separate plaintiffs to have individual determination of the issues presented by each (R. 163-164).

[2]The maximum buying charges voluntarily adopted by petitioners and filed with the Secretary are lower than the buying charges prescribed in the order. See FF. 84, R. 65, and FF. 180, R. 129.

ing,[4] although many of them also buy livestock for clients. In making purchases, such appellants are engaged in "order buying", *i.e.*, purchasing cattle as agents for persons throughout the country, largely "stockers and feeders" to be fattened or for Eastern packers.[5] A large part of the buying on order is done by market agencies which do no selling.[6] Rules of the Kansas City Livestock Exchange,[7] of which all of the selling agencies other than cooperatives are members,[8] provide that no agency shall buy livestock consigned to it for sale. The local packers who purchase cattle for slaughter maintain salaried buyers at the yards. Off-market packers sometimes employ the services of appellants to buy livestock and sometimes employ salaried buyers.[8a] The market is open, public and competitive, and no one is under any form of compulsion to employ the services of the appellants but may sell or buy, using the market, on his own account, or through a salaried employee.[9] The packers also purchase directly from growers in the country, and this practice is growing.[10]

Appellants constitute all of the market agencies doing a selling business on commission at the Kansas City Stockyards,[11] excepting two cooperative companies.[12] The stock-

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[4]Almost all sales are for the grower, but a very minor amount consists of occasional sales for registered "dealers" of a few head of slaughter livestock. Such sales are called "seconds." FF. 62, R. 54; R. 318.

[5]R. 202.

[6]FF. 51, R. 50.

[7]Govt. Ex. 9.

[8]FF. 98, R. 77.

[8a]FF. 49, R. 47.

[9]FF. 51, R. 49.

[10]FF. 22, R. 37-38; R. 226, 238-239, 248, 255, 545, 504, 630, 617, 690.

[11]Seven firms engaged exclusively in order buying on the Kansas City market are not parties.

[12]Farmers Union Livestock Commission Company and Producers Commission Association.

yard company's rates for its facilities and services are not involved.[13]

The rates of the appellants were first fixed in a proceeding instituted under the Packers and Stockyards Act of 1921 by a report and award of arbitrators approved by the Secretary of Agriculture on July 27, 1923,[14] and those rates remained in force without material change until 1932.

On April 7, 1930, the Secretary on his own motion instituted the present proceeding inquiring into the reasonableness and lawfulness of appellants' rates. A hearing was had before an Examiner (hereinafter referred to as the "1930-1931 hearing") resulting, on May 18, 1932, in an order signed by an Acting Secretary of Agriculture prescribing lower maximum rates for the future. Prior to that order, and on May 11, 1932, the appellants had individually and voluntarily filed reduced schedules of rates to become effective on May 23, 1932.[15] These rates thus filed by the appellants went into effect, were in effect at the time the order challenged was entered, and are now being collected subject to the impounding order of the court below.[16] As stated in the Secretary's findings,[17] these tariffs were filed in recognition of a very drastic depression in livestock prices in 1932 and to remove admitted discriminations in

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[13]Cf. *St. Joseph Stockyard Co.* v. *U. S.*, No. 497, present term.

[14]Res. Ex. 24. The arbitrators were the officials of the Department of Agriculture engaged in making the investigation (Secretary Howard M. Gore and Golden N. Dagger, Esq. of the Packers & Stockyards Administration. After a full inquiry they made a complete award (Res. Ex. 24) which was put in effect after approval by the then Secretary of Agriculture without appeal to the courts under a stipulation entered into by the market agencies (Res. Ex. 24).

[15]FF. 1-7, R. 26-30.

[16]R. 131.

[17]FF. 112, R. 82.

the Schedules approved by the Secretary in 1923, due to changed conditions of business.[18]

The Secretary's order of May 18, 1932, was vacated before its effective date; and a rehearing was granted (hereinafter referred to as the "1932 hearing") at which additional evidence was taken before an Examiner.[18a] This rehearing resulted in an order signed by the Secretary on June 14, 1933, finding that the rates (both for selling and buying) of appellants were "unreasonable and unjustly discriminatory" (FF. 179, R. 127) and prescribing still lower maximum selling rates which he finds to be "just and reasonable rates" and increasing somewhat the maximum buying rates (FF. 180, R. 127). That is the order challenged on this appeal. A petition for rehearing and reinvestigation was subsequently denied by the Secretary (R. 3).

The challenged order is accompanied by lengthy findings (R. 23-130) which refer to the evidence offered at the 1930-1931 hearing and at the 1932 hearing. Narrative statements of the testimony taken at both these hearings were before the court below and are a part of the record on appeal. The exhibits offered before the Secretary and the lower court have been brought to this Court as original exhibits. Those deemed most pertinent have been photostated and ten copies thereof have been filed with the Clerk of this Court. These photostats are bound in two parts and will for convenience be referred to in this brief as volumes III and IV of the record.[18a]

As more fully discussed hereinafter, the result of the Secretary's rates is under present conditions confiscatory as to every firm now engaged in the commission business at

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[18]FF. 28, R. 40; FF. 175, R. 126.
[18a]FF. 8-9, R. 30.

the Kansas City stockyards, and these rates have already driven a number of the present appellants out of that business (see p. 13, *post*). Although the voluminous character of the findings of the Secretary and of the record serves to submerge it, the ultimate basis of the reduction in commission rates prescribed by the challenged order is the Secretary's opinion that there are too many market agencies, too many salesmen, and too much competition in the business.[19] While disclaiming any authority under the statute to determine how many firms shall engage in business as market agencies at the stockyards,[20] he has, in fact, set about to enforce his will and views in that regard by departing entirely from all of the evidence as to the actual cost of employing salesmen in selling cattle at these yards and in making an allowance for salesmanship salaries which is based upon pure speculation and hypothesis and which is wholly inadequate to meet the cost of that service.[21] He has also substituted, in place of his own accountants' figures as to the actual expenditures of the appellants for the cost item entitled by him "Business Getting and Maintaining Expense" (but which we shall establish is in reality, as respects the bulk of such expense, a part of the selling service), a figure less than half the amount of such costs as established by the record, and he has made those allowances by completely disregarding all the cost evidence and assigning a purely speculative and hypothetical allowance for this item.[22] There are other serious objections to the Secretary's findings and order but his action in respect of these items alone is sufficient to account for a

[19]FF. 129, 130, 131, R. 90-91.
[20]FF. 129, R. 90.
[21]FF. 139, 143, R. 95, 97; see Point IV, *post*.
[22]FF. 148, R. 109-10; see Point V. *post*.

major portion of the reduction in rates which he has ordered and to render his order void.

The appellants applied to the court below by petitions in equity as provided by Section 316 of the Act to enjoin and annul the order,[23] asserting[24] that the Secretary had denied petitioner a full hearing as required by the Act and by the Fifth Amendment by his refusal to grant petitioner an individual hearing, by denying petitioner a hearing upon a tentative order, by unlawfully delegating his powers to his assistants, by himself failing to consider the evidence or to hear or consider petitioner's arguments, and by failing to exercise his own judgment;[25] that the order and the rates prescribed thereby were arbitrary and unreasonable because based upon findings made without evidence and contrary to all the evidence and upon findings which ignored undisputed facts; that the rates prescribed were not just and reasonable; that the Secretary's findings and order were based

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[23]Section 316 of the Packers and Stockyards Act makes applicable the procedure prescribed by Sections 43 to 47 (a) of Title 28 of the United States Code relating to suits to enjoin or set aside orders of the Interstate Commerce Commission.

[24]R. 1-22.

[25]While the statute lodges the rate-making power in the Secretary (Section 310), the record shows that the evidence was taken before examiners, the argument had before Assistant Secretaries Dunlap and Tugwell, and that, while the challenged order is signed by the Secretary himself,

> "the Secretary at the time said Order was signed by him had not personally heard or read any of the evidence presented at any hearing in connection with this proceeding and had not heard or considered oral arguments relating thereto submitted on behalf of this petitioner and had (*sic*) read or considered any briefs submitted by petitioner in this proceeding, but that the sole information of said Secretary with respect to said proceeding was derived from consultation with employees in the Department of Agriculture, out of the presence of this petitioner or any representative of this petitioner." (R. 4-5; see R. 27, 28, 30, 33). See Point VII, *post*.

upon erroneous conceptions of law and were therefore unlawful and void; that the rates prescribed were confiscatory and took petitioner's property without due process of law; that the Secretary erred in overruling a petition for rehearing after his order was made.

The cause was heard in the court below upon the petitions of the appellants, the answers of the appellees, the administrative records made both at the 1929-1930 and 1932 hearings, and additional evidence taken before the court.

The court dismissed the petitions on the merits.[26]

THE LIVESTOCK MARKET AGENCIES INVOLVED IN THE ADMINISTRATIVE PROCEEDINGS AND IN THESE JUDICIAL PROCEEDINGS.

At the time of the institution of the 1930-1931 hearing, there were 62 market agencies engaged in selling or in selling and buying livestock at the Kansas City Stockyard.[1] The audits and cost studies made at both administrative hearings related to each of these agencies. Their names, and the code numbers which were assigned to each for auditing and accounting purposes and by which they

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[26]The difference between the rates prescribed under the appellants' schedule of May 11, 1932 and those prescribed by the Secretary's order of June 14, 1933 was impounded in the court below during the trial pursuant to the terms of the temporary restraining order (R. 131-132) and the impounding is being continued pending this appeal under the terms of the supersedeas granted by the court below (R. 178-180).

[1]This is exclusive of agencies devoting their entire time to "order buying".

are identified in the original exhibits, are listed in the margin.[2]

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[2]1 Morgan & Company, Fred O.
4 Ragland-Storts and Burrus Commission Company.
5 Klecker Sheep Commission Company, Hinie.
6 Lewis Flournoy Livestock Commission Company.
7 Maxwell Commission Company, Grover C.
8 McDonald Livestock Commission Company.
9 Nichols Livestock Commission Co., Jno. M.
10 Producers Commission Association.
11 Andrews Livestock Commission Co., L. B.
12 Bowles Livestock Commission Company.
13 Crider Bros. Commission Company.
14 Dixon Commission Company, Chas.
15 Elliott, Swain & Company.
16 Farrar Davis & Campbell Commission Company.
17 Gladish Livestock Commission Co.
18 Haggart, Wilson Commission Company.
19 Interstate Commission Company, W. E. Burrus.
20 Kansas City Livestock Commission Company.
23 Sanders Commission Company, Fern O.
25 Stuart & Company, C. A.
26 Wester Bros. & Smith Commission Company.
29 Stagner, Peironnet & Willis Commission Company.
30 Tamblyn Commission Company.
33 Carnes Commission Company, Henry.
34 Cummings Commission Company, Warren.
35 Drumm-Standish Commission Company.
36 Farmers Union Livestock Commission Company.
37 Link Fasken Commission Company.
42 Long & Perry Commission Company.
43 Knight & Tice Sheep Commission Company.
44 Leitch Sheep Commission Co., W. M.
46 National Livestock Commission Co.
48 Poole-Dempsey-Rutherford Commission Company.
51 Kennaley Commission Company, Harry.
52 Jefferson, Lowry, Davis Commission Company.
53 Ehrke-Martin Commission Company.
54 John Clay & Company.
55 Baucus & Company.
56 Robinson-Hoover Commission Co.
59 Swift & Henry Commission Co.
60 Thies & Son, H.
61 Knighton, Commission Co., Ham.
62 Laird Bros. Commission Company.
63 Martin Bros. & Lee Commission Company.

Upon the institution of the present judicial proceedings on July 19, 1933 (R. 1), petitions in equity were filed by 50 agencies, representing all the selling agencies then in business at the Kansas City Stockyards, aside from two cooperative agencies which have not sought to enjoin the order.[3]

Since the institution of the judicial proceedings and the entry of the impounding order by the court below on July 22, 1933 (R. 131), eight of the agencies which are parties to these proceedings and to the appeal to this Court have been forced to go out of business as a result of the Secretary's new rates, which have, in effect, been put into operation by the impounding order.[4] The interest of these agen-

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65 Moffett Commission Company.
66 McCormack L. S. Commission Company, Jay D.
67 Peed Livestock Commission Company, W. H.
70 Kile Livestock Commission Company, W. C.
71 Ryan-Robinson Commission Company.
72 Welch Livestock Commission Company.
73 Witherspoon Livestock Commission Co.
74 Boddington Commission Company, Frank.
75 Curtis & Company, W. E.
76 Greer & Company.
77 Inman-Hutton Commission Company.
78 Land Livestock Commission Company, Walter G.
79 White Livestock Commission Company, Less.
82 Wilson, Egan & Company.
83 Burlington Commission Company.
84 Cassidy Southwestern Commission Company.
87 Hamer, Dave.
88 Kimmons Commission Company, Ira.

[3]Firms Nos. 10 and 36—Producers Commission Association and Farmers Union Livestock Commission Company.

[4]Fred O. Morgan & Company.
Hinie Klecker Sheep Commission Company.
Henry F. Carnes Commission Company.
Drumm-Standish Commission Company.
Jay D. McCormack L. S. Commission Company.
Welch Livestock Commission Company.
Walter G. Land Livestock Commission Company.
Less White Livestock Commission Company.

cies in enjoining the Secretary's rates continues by reason of the fact, among others, that a reversal of the decree below and granting of the relief prayed in their petitions would result in the return to them of commissions earned by them and impounded with the clerk of the court below. The appeal presents no moot issue as to them, and they remain as proper parties thereto.[5] In conformity with the settled rule permitting extrinsic evidence upon such matters to be adduced in this Court,[6] affidavits have been filed by these agencies disclosing that while the new rates have forced them out of business they remain parties to this appeal with an interest in the return of their impounded commissions.[7] A certificate of the clerk of the court below showing impoundings by these agencies has also been filed in this Court.[8]

In respect of still another agency,[9] an affidavit has been filed showing that by reason both of the effect of the rates and of failing health, that appellant no longer conducts business in the normal manner but has his consignments received and his commissions cleared through another market agency.[10]

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[5]*Groesbeck* v. *Duluth S.S. & A. Railway Company*, 250 U. S. 607, 609. Cf. *Southern Pacific Company* v. *Interstate Commerce Commission*, 219 U. S. 433, 452; *Standard Fashion Company* v. *Magrane-Houston Company*, 258 U. S. 346, 353.

[6]*Dakota County* v. *Glidden*, 113 U. S. 222, 225, 226; *Lord* v. *Veazie*, 8 How. 251, 253, 254; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 304, 308; *Jones* v. *Montague*, 194 U. S. 147, 149, 153.

[7]See Appendix A, pp. i-viii. The originals of these affidavits are on file with the Clerk of this Court.

[8]See Appendix A, p. viii. The original of this affidavit is on file with the Clerk of this Court.

[9]Link Fasken Commission Company, Firm No. 37.

[10]See Appendix A, p. vi. The original of this affidavit is on file with the Clerk of this Court.

A motion by the attorneys for the surety of another appellant to substitute the surety in his place and stead[11] informs the Court that that appellant is now in default on his bond as a result of bad management in failing to book all realized costs.

NATURE OF THE SERVICES PERFORMED

The business conducted by the appellants is a personal service business,[1] having for its purpose the procurement of the best possible price for the grower. The physical facilities employed are provided by the Kansas City Stockyards Company[2] whose charges are not in question in the present proceeding. The Kansas City Livestock Market, established in 1871, is and has been for many years the second largest livestock market in the United States.[3] It receives livestock from an area extending from Texas and the western slope of the Rocky Mountains in the South and West to Central Missouri in the East.[4] The market agencies are not only in competition with each other[5] but with other central livestock markets.[6]

Other than cooperatives, market agencies are conducted either by (1) closely held private corporations; (2) partnerships; or (3) by a single individual owning and operat-

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[11]Motion of receivers of Harry Kennaley Commission Company, Firm No. 51.

[1]FF. 77, R. 60.

[2]FF. 16, R. 34; FF. 30, R. 41.

[3]R. 361; FF. 16, 17, R. 34.

[4]FF. 18, R. 34.

[5]R. 227, 462, 470, 575, 777-778, 781, 1037, see FF. 89-97, R. 73-77; FF. 129-131, R. 90-91.

[6]R. 228, 233, 238-9, 330, 462, 470, 472, 770, 706-707, 734-735, 746, 796, 1035.

ing the agency.[7] In either case, the "owners", whether stockholders, partners or individuals, devote their own personal time and attention to the business and perform a substantial part of the personal service rendered by the market agencies, especially the performance of the all-important function of selling the livestock[8] consigned to the particular agency.[9]

From a social and economic standpoint, as distinguished from the selfish interest of the agency, the purpose of the services performed is to obtain for the grower the best possible price. This requires the exercise of skill, judgment and the highest fidelity to the interests of the client, as recognized in the Secretary's findings[10] but to the importance of which they give scant justice. Most of the market agencies at the Kansas City yards had been engaged in the business for many years prior to the enactment of the Packers and Stockyards Act, many of them, or their immediate predecessors, having conducted such business there for from

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[7]FF. 52, R. 50.

[8]FF. 132, 133, R. 92; FF. 53, R. 51. In the case of the cooperatives (FF. 52, R. 50) and of market agencies conducting business at a number of markets and having their headquarters elsewhere (R. 292-293), all services performed, including that of selling, are conducted by salaried employees. In a few of the larger resident firms one of the partners or owners may devote his time almost entirely to the performance of managerial or supervisory functions (R. 509), but for the most part the "owners" are actively engaged in selling, at the same time exercising such managerial and supervisory functions over the business of the firm as a whole as may be required (FF. 132, 133, R. 92). Most of the firms conducting the larger share of the business also employed salaried salesmen in addition to "owner" salesmen (*id.*).

[9]Producers of livestock desiring to sell at the Kansas City market consign the stock to a market agency which negotiates and executes the sale as the agent of the grower and, after deducting transportation and Stockyards Company expense, and its own charge, remits the net proceeds to the producer (FF. 73, R. 58).

[10]FF. 81, 82, R. 62-63; FF. 65, R. 55. See FF. 133, R. 92; FF. 138, R. 95.

25 to 50 years.[11] And many of the "owners" rendering these personal services have been engaged in the business for the same period.[12] This is particularly true of the larger firms carrying on the greater part of the business done. In other words, the "owners," whose rates and consequently whose livelihood are affected by the Secretary's order, have made this business their life work.

The salesman, be he owner or employee, is not a mere auctioneer, but a bargainer whose job it is to obtain for the grower the best possible price for the particular number, grade and quality of the livestock sold.[13] The price on a single day's market will vary on different classes of cattle from $2.50 to $14.50 per cwt.[14] Bids from different cattle buyers may and do vary as much as $1 to $1.50 per cwt. for the same cattle on a single market day.[15] This means a difference to the grower of from $10 to $15 per head between low and top prices on a thousand-pound steer in a single day's trading.

The livestock of each shipper is sold separately and according to grade, each sale being designated as a "draft," the average draft of cattle consisting of 5.22 head.[16] The increasing proportion of "truck-in" receipts,[17] the tendency toward smaller consignments and consignments of plural ownership,[18] and the increased particularization in demand,[19] have in recent years caused a decrease in the size of drafts

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[11]Res. Ex. 204.
[12]R. 271, 272.
[13]FF. 65, R. 55.
[14]R. 331, 319.
[15]R. 204, 324.
[16]Pet. Ex. 9, R. Vol. III, p. 11.
[17]FF. 26, R. 38.
[18]FF. 24, R. 38.
[19]FF. 53, R. 51.

and have caused the business to take on more of the aspects of the retail handling of a commodity.[20]

A graphic illustration of the bargaining process through which the salesman endeavors to obtain the best possible price for the grower may be found in the testimony of the first witness called by the Government at the first administrative hearing, Mr. Fred H. Olander, one of the officers and managing stockholders of the National Livestock Commission Company, ranking fourth in the volume of business done,[21] and himself a "fat cattle" salesman.[22] Mr. Olander testified:

> "Last week I handled two loads of cattle for a man in Kansas. I asked a packer buyer 11 cents a pound for them. He bid ten and a half and left me. I got another packer buyer, and he bid 10.75, and then I got another packer buyer and he bid 10.85. I appreciated the fact that I was getting close to the value of those cattle on that particular market day. I came pretty close to accepting that last bid of 10.85. As I was walking down the alley, I met the buyer who had been in the pen first. He asked me if I wanted to sell them to him, and I said I absolutely did not. When he asked me why, I said that it was because I was bid 35 cents a hundred more than he had bid me. He went back to look at them, and I stood pat for my 11 cents, and just missed the mark by five cattle, which I took out at a dollar a hundred less, which made the cattle average just about 10.90." (R. 240).

The difference in the return to the grower as a result of this successful bargaining upon the part of Mr. Olander,

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[20]FF. 28, R. 40.
[21]Res. Ex. 243, R. Vol. III, p. 42.
[22]R. 202.

between the price received and the price first bid, was thus 40 cents a hundred or $4 a head on a steer of 1,000 pounds. Mr. Olander's commission would have been the same if he had accepted the first bid. The additional return to the grower resulting from Mr. Olander's careful and time-consuming bargaining was thus over six times the commission paid,[1] which is on a headage basis and not on a percentage of price received both under the existing rates and those prescribed by the Secretary. Obviously, if instead of engaging in this bargaining process, Mr. Olander had been willing to accept the first bid after such limited bargaining as he might have then engaged in with the first bidder, he could have sold within the time consumed by the sale of this draft of cattle three times as many cattle as he did sell, for, during this period, he conducted three successive bargains.

Price, not volume or speed, is the test of a salesman's ability and value. All of the witnesses so testified. There is no evidence to the contrary. The difference between the effective and ineffective conduct of salesmanship, from the standpoint of the grower whose agent the market agency is and whose interest it was the primary purpose of the Act to protect, is evidenced by an exhibit[2] showing the range of average prices received in 1931 by the several agencies on light weight cattle from a low of $10.43 a head to a high of $19.40, and on heavyweight cattle (the kind that Mr. Olander sells) from $36.52 to $68.52. Mr. Olander's firm, whose selling practices in respect of heavy cattle are illustrated by the foregoing excerpt from his testimony, ranked

[1]The charge on such a consignment ranges from 60c to 70c per head according to the size of the consignment. The charge here would be 64c. R. 64.

[2]Res. Ex. 249, R. Vol. III, p. 43.

eleventh of all the 60 agencies in the returns per head to the grower on heavy cattle, averaging $61.94 against the low of $37, the high of $69 and an average of $59.57.[4]

As also appears from the testimony of Mr. Olander, called by the Government as its own witness, he frequently holds cattle over two or three days for sale, sometimes as long as a week, in the pursuit of the primary purpose of obtaining for the grower the best price, thus slowing up sales, cutting down salesmanship performance, if measured only by the number of cattle sold per year, but increasing thereby returns to the grower.[5] The selling period is theoretically between 9 A. M. and 3 P. M.; but the active selling period is dependent wholly upon the buyers who sometimes come out late and sometimes go in early and who buy quickly or slowly at their option.[6]

Salesmen's services, be they owners or salaried employees, are not confined to the sale of cattle, with the bar-

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[4]Res. Ex. 249, R. Vol. III, p. 43 (Firm No. 46). Under the Secretary's order Mr. Olander, who the record shows works approximately 12 hours a day, performing other duties before and after sales hours, and who carefully bargains in the interests of his shipper with the results shown both by the illustration given and by the average result of his sales, would receive as his share of the profits for his firm (all of whose members likewise devote all of their personal time to the conduct of the business, largely in selling), after deducting the expenses incurred in its conduct, but before any compensation whatever to members of the firm, the munificent sum of $1,124 per year (Pet. Ex. 4, R. Vol. III. p. 6, col. n).

[5]Mr. Olander testified: "It is the job of the salesman to get the highest possible price. The price is not tagged on these livestock. The price must be determined as the result of trading between buyers and sellers, and the exercise of judgment. It has been my experience that the first bids placed on livestock are much less than I finally get for them. *I may have to work all day, and I may have to work a week, and I have worked as long as a week selling one load of cattle.* The commission man is interested in getting the highest possible price, and he is willing to work as long as it is necessary to do that" (Emphasis ours) (R. 217).

[6]FF. 65, R. 55.

gaining process involved as described by Mr. Olander, but include other services all of which, however, are directly related to salesmanship and constitute a proper part of the cost of sales. These services include

(1) early morning examination of dealings on and prices received at the several markets during the preceding day and of the character of buying, particularly by the packers at the Kansas City yards, on the previous day from which judgment is formed as to the probable character of the buying to be anticipated on that day;[7]

(2) personal examination of the cattle consigned to his firm in the course of which he participates with the yardmen in the grading and sorting of stock;[8]

(3) acquisition of first-hand knowledge as to conditions under which cattle consigned to his firm have been grown, fattened and fed, including climatic conditions, nature of feed, degree of care exercised by the grower. This information is obtained by the salesman in part through correspondence but more largely by personal visits to the feed lots and farms, which may be properly described as country contacts which the uncontradicted testimony shows were advantageous to the grower although performed solely at the expense of the agency. As a result of the information obtained from these country contacts, the salesman can obtain a better

[7]R. 205, 206; FF. 64, R. 54.

[8]FF. 63, R. 54; FF. 65, R. 55. Specilization in demand for particular kinds and qualities of livestock, leading to increased sorting, has been greatest in the case of cattle. FF. 53, R. 51.

price in his bargaining with buyers at the market.[9] Moreover, the knowledge about the cattle obtained through these country contacts enables the agency better to advise the grower when to ship to market.[10] The fact that these trips are usually upon request and that requests exceed the ability of the agencies to respond[11] demonstrates the value of this activity to the grower.

Services of the latter description were classified by the Secretary and his accountant as a part of the cost of getting and maintaining business. In one sense they may no doubt be properly so classified. In point of fact, however, they are costs incurred by the agency for the purpose of getting the best price obtainable for the grower and are more logically assignable to selling cost than to the cost of getting and maintaining business. These country contacts are also of value in enabling the agency to advise the grower how to care for his cattle in order that they will be

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[9]R. 224, 332-333, 606, 629, 661, 1053-1054; cf. FF. 64, R. 54. For example, one salesman testified:

> "Purchasers of slaughter cattle want to know how they have been fed. It is an advantage to a salesman to be able to tell the purchasers accurately and to base his statement upon his own observation and information. It is not so much of advantage to the salesman as it is to the owner of the livestock. He is the man who benefits." (R. 1053).

[10]R. 603, 668, 728; FF. 93, R. 75. A cattle salesman testified:

> "We very often get requests to make these trips. I know the kind of cattle that a great many of my customers handle, how they feed them, pasture them, and the location they are in. When I see them I am better able to advise them how to market them, and that is the advice they are generally seeking." (R. 668).

[11]FF. 93, R. 75; R. 207, 212, 550, 570, 629, 661, 664, 665, 671.

of the best quality when sent to market.[12] Similar service of value to the growers is performed by the market agencies in arranging for and supervising the pasturing of cattle near Kansas City.[12a]

After the market closes salesmen, particularly owner-salesmen, do office work consisting of conducting corrrespondence with growers, performance of managerial functions, etc.[13] The agency remits to the grower upon the day of sale, customarily before it has been paid by the buyer, thus requiring the use of capital or credit for this purpose and assuming the risk of non-payment by the buyer.[14]

The owners of these agencies customarily arrive at the yards around 6 o'clock in the morning and remain until 5 or 6 o'clock in the evening and often until midnight.[15] The

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[12]R. 448, 461, 512, 603, 670, 671. A cattle salesman testified:

> "A Texas customer, about the first of December, asked me to go to Sudan, Texas, to look over 500 cattle which he had on feed at a cotton mill. We went to look at the cattle and found that they had about three kinds of cattle in there. I told him in the first place that his cattle were not fat, that he would have to keep them longer and when he went to shipping these cattle to ship a couple of loads of the heaviest plainer cattle, one load of the light handy cattle and one load of the Mexicans at a time. I told him that he ought to keep them 30 or 40 days longer before he commenced shipping anything. He told me to write him every week in regard to his kind of cattle and tell him when to ship and what to ship. I commenced shipping three loads of those cattle for Monday's market three weeks ago. He has about 200 of them left and I wired him not to ship any more for a couple of weeks. Now, that is what they put up to you. They claim it is worth a lot of money to them for you to see this stuff. The Drovers Telegram and the radio business do not give them any information on the kind of cattle they have and they are interested only in their kind of cattle." (R. 670-671).

[12a]FF. 95, R. 76.

[13]FF. 74, R. 59.

[14]FF. 78, R. 60.

[15]R. 447, 316, 459, 577.

typical day of such an owner is illustrated by the evidence of Mr. Olander,[16] the Government's first witness, given on his direct examination, and reproduced in the margin.[17]

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[16]Similar but individually less comprehensive discriptions of a salesman's typical day will be found at R. 441-442; R. 304-305; R. 567-568; R. 441; R. 538; see also FF. 64-67, R. 54-6.

[17]Mr. Olander testified (R. 205-209):

"In describing the activities of fat cattle salesmen I will use myself as the individual I am going to describe. One of the yard men calls me the first four mornings in the week at 5:15 during the fall season of the year, when, because of the greater amount of sorting and larger strings of cattle which arrive from the pastures in the fall of the year, it is necessary for us to get down earlier than usual, in order to get the sorting done in time to show it at eight o'clock in the morning when the market opens. During the winter season, when there is not the big strings of cattle, and the consignment consists more of smaller units, we generally figure on arriving at the market between six and seven [fol. 244] o'clock, depending on the amount of business that is in sight for that day. The yard man calls me again when he reaches the yards around six o'clock, and know[s] what has arrived during the night. When I arrive and change my clothes, I immediately go to the bulletin board in the lobby of the Exchange Building, upon which is placed the receipts of a great many of the principal livestock markets in the country. I can tell something about the available supply on that day's market. On the previous day, I have made it a point to contact as many of the head steer buyers for the packers as possible, and try to get from them any information which might be of value to me on the next day. They may have an inquiry for a certain class of cattle, and I get from these buyers all the information I can relative to the way the cattle that I have sold them have dressed out. After I have sized up the receipts of the different markets, I go out to the pens and I go into each pen in our alley which contains steer cattle. I look each pen over very closely. I decide whether or not that particular pen of cattle should be sorted to bring the most dollars. I look them over for weight, for quality, and I have in mind their origin. I have in mind the particular owner, and how he handles his cattle. I take into consideration the conditions as to the fat of these cattle. I look at their briskets and their loins, and I put my hands on some of them to feel the amount of fat that they carry. I take all these things into consideration in making up my mind how we are going to handle that particular load of cattle, and what I am going to ask for them. Then, I put [fol. 245] these cattle out in the alley, and sort them, as previously described. Those cattle which we do not have to sort are split

In addition to salesmen, whether employees or owners, the agencies also employ yardmen and clerical help. The

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into small lots of eight or nine cattle to the pen, in order to give them every chance to drink.

"After I have gone through the performance of grading and sorting these cattle, and fixing them up ready to show, I will drop into the lobby of the building, and look at the eastern beef markets. We know that Boston, New York and Philadelphia are right in the center of the big consuming trade of our country. If beef is moving pretty well down there, maybe at higher prices, it is some indication to me that maybe I can get some higher prices for the live cattle that I have got to sell. I have the report of the receipts, and I also have the boys in the office get me every morning the amount of cattle that the different buyers of fat cattle have purchased the day before. I keep a check by days of the packer buyers' operations, and I will see how many they bought compared with previous days' purchases. It may show that one packer has not bought many cattle. I know that he has a plant that he must keep going, and I know that he is going to have to have livestock. So, I have a hunch that he might be a pretty good buyer the next day. I make it a point to get him when he comes out in the morning and show him my cattle.

"I may have seen a number of these cattle in the country. We have many requests coming from the country, and I have gone to the owner's farm in order to counsel with him and advise him what to do. I spend a good many week- [fol. 246] ends in the country. All of the members of our firm do some appraisal work; that is, I mean they go to the country and advise with customers in regard to the handling and marketing and the present value of their livestock. I could do a lot more country traveling than I do, but it is quite expensive. We have not got enough men to put them out to make the visits that we are requested. I do not imagine that I have asked a half a dozen people in my life for a load of livestock. I have an idea that if I cannot impress myself upon the owner of the livestock by the way I work for him, and by the things I stand for, I don't think that I would gain much by asking him to ship to me. The fact that I am there would indicate to him that I would be glad to help him in the sale of his livestock.

"We spend quite a little time hunting buyers. That is different on different days. There are days when there is a good active market for fat cattle and it may be that receipts are short on that day. The buyers will look you up on those days. When you have lots of them you have got to put in your time trying to get buyers. Our firm has two fat cattle salesmen, two butcher cattle salesmen, one calf salesman, two hog salesmen, and our sheep salesman is a man who has a commission business of his own. The fat cattle salesmen sell fat steers and feeders. I sell most of the fat cattle in a

livestock is received by the yardman from the Stockyards Company, whether brought in by rail or truck or

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year's time and he will sell most of the feeders. In the butcher cattle division my brother sells the fat butcher stock and the bulls. The other butcher salesman sells the stocker and feeder female cattle. [fol. 247] We also have one stocker and feeder salesman on steers. The fat steer salesman, other than myself, devotes his principal attention to selling those cattle that come in as stockers and feeders which are fat enough to be sold for slaughter. In a very small firm one man may sell all the cattle that he receives. In our opinion it is an advantage to our customers by reason of the fact that we have two fat steer salesmen. In the opinion of others it may not be any advantage. The volume of business in some firms might be so small as not to permit it. The purpose of having different salesmen for different grades of cattle is to render a greater service. It is also occasioned by the buying methods of packers. Instead of weighing all the cows to one pen as they used to do, they have a number of different pens and in selling to those packers a commission firm is required to weigh these cattle to the different numbered pens. I do not know what proportion of our cattle is sold as fat steers. We contact with the buyer either by locating him in the yards or in the event he may come to our pens he will say, 'I will buy certain kind of cattle.' We have to know whether or not we have cattle in the alley that is the kind he wants and we will escort him to the pens, let him in and go with him. He will ride through the cattle and we will be right there by his side as he looks them over. If he decides he can use them he makes a bid which may be what you think is about the worth of the cattle and then you commence to trade with him. You try to get him to put on some more and use the best sales talk you have. You give him all the [fol. 248] information about cattle, as to where they came from and who fed them. He may not come up to the price that we think the cattle are worth and we will let him go and then get another buyer.

* * * * *

"The local packers have other buyers for butcher cattle and for calves. According to trading customs we do not have an unlimited amount of time to make up our minds whether or not we will accept a bid because when a buyer leaves your alley he does not have to take the cattle at the bid he placed on them. If you sell to him while he is within the confines of your alley under the trading rules he must take them. The salesman sells [fol. 249] when in his judgment he has gotten the best price. After I have sold a pen of cattle I tell my yardman that the pen of cattle weighs to such and such a buyer. When he has free access to the scales and when he can move clear up to the scale gate he opens the gate, or I may open the gate and drive the cattle out. He goes ahead of the cattle to the scales and I may fol-

driven in, and is driven by him and his associates (the number depending, of course, upon the size of the business conducted) to pens set aside by the Stockyards Company for the particular agency. Identity of ownership is preserved by the yardman and, as previously stated, the cattle are thereafter graded and shaped up for exhibition and sale by the salesmen and the yardmen jointly.[18] The salesmen also frequently assist the yardmen in the performance of strictly yard duties and yardmen frequently assist salesmen in the making of sales. Office work may be performed by owners, salesmen, yardmen or strictly office employees, according to the size and requirements of the particular agency involved.[19]

Most of the market agencies send out periodical market reports to their customers. These are not duplicates of official reports. They vary in content, and contain general

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low them, somebody else may follow them or the owner may follow them. At the east end of the scales is a stockyard company employee who has charge of the gate. He will open the gate and we will push the cattle onto the scales and close the gate. Our yardman tells the stockyard man to whom the cattle are to be weighed. The stockyard company man calls through a tube to the stockyard foreman on the other side 'National Livestock to so and so.' Our yardman goes into the scale house and tells him who owns the livestock and to whom they are to be weighed. The weighmaster weighs the cattle, marks the weight down, and makes notations relative to who is weighing them, the buyer, the owner, the number of head and the weight. When the cattle have been counted off the scales by the stockyards-foreman he registers the number of cattle in the draft on a machine which also registers in front of the weighmaster, he records the number of head on the ticket. The weight is then stamped on the ticket. He compares the stamped weight with the written weight and turns the ticket over to the yardman. The yardman averages the weight and writes a description of the cattle on the ticket and hands the ticket [fol. 250] to the salesman who registers the price at which he sold the cattle.

[18]For a description of a yardman's typical day, see R. 488-491. See FF. 41-44, R. 44-45.

[19]FF. 54, R. 51; FF. 115, R. 115.

market information, comments upon marketing problems, and information about particular matters of interest to the growers, such as information about particular sales which enables the seller better to judge the worth of his own cattle.[20]

RELATION OF RATES TO VALUE OF SERVICES

The ratio of total earned charges of market agencies at the Kansas City market to gross sales and purchases at the existing rates is very low.[1] Charges for selling livestock in 1929 were but .084% of the value of the product[2] as compared with 1.18% for corn, 1.20% for wheat, 1.58% for oats, 3.88% for eggs, 5.27% for hay, 7% for vegetables in carload lots, 10% for vegetables in less than carload lots, 10% for citrus fruits in less than carload lots, 10.26% for wool and 12.20% for hides. Also, it is disclosed by the evidence that commissions customarily paid for selling livestock in large droves on the farm or ranch are higher

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[20]R. 730-733, 295, 548-549, 925; FF. 89, R. 73.

[1]Howard D. Dozier, economist in the Bureau of Animal Industry, Department of Agriculture, testified at the first hearing:

> "There is a small ratio between the value of the livestock sold and the commission charged. The raising of railroad rates by a flat 100% would kill a very great deal of railroad traffic. The situation with railroad traffic is not analogous to the commission business. Purely from the standpoint of the value of the service to the shipper of the livestock, it might be possible that you could double your rates and kill off a comparatively small amount of your business. You might lower the rate and get no added volume as a result of it. * * *" R. 422; see also R. 426.

[2]Res. Ex. 56, R. Vol. III, p. 40. See R. 140. Since the charge does not vary with the value of the product, the ratio of commission charges to value of product will vary with fluctuations in livestock prices. The ratio would be somewhat higher at the present time than it was in 1929.

than the rates held reasonable by the challenged order.[3] It is admitted in the answer that market agencies at Kansas City only increased rates 10% during the war period while other wages, including farm wages, increased more than 200 per cent.[4]

SEASONAL AND OTHER VARIATIONS

The arrival of cattle at the Kansas City market is subject to daily and to seasonal fluctuations. Cattle arrive in diminishing volume during each day in the week. The Monday receipts amount on the average to 49.5%[1] of the total weekly receipts, and Fridays and Saturdays are very inactive.

Due to climatic conditions and other factors, there is a very pronounced seasonal variation in the receipt of livestock at the Kansas City market. The seasonal variation in the Kansas City market is much greater than at the Chicago market. The detailed figures in the record for 1931 show that monthly cattle receipts at the Kansas City yard varied from a low in July of 101,705 head to a high in October of 201,489. The average monthly receipts amounted to 138,998, or 69% of the receipts in the peak month. On the other hand, the variation in cattle movement at Chicago in 1931 was only from a low in February of 153,918 to a high in October of 226,236, and the relation of the average of 190,546 head to the peak month was

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[3]R. 886.

[4]R. 140.

[1]Govt. Ex. 116, R. Vol. III, p. 39, gives daily receipts at the Kansas City market for each species for 1930, 1931, and January to September, 1932. The figure of 49½% is calculated from the 1931 figures in this exhibit, as are the other items respecting receipts of cattle at the Kansas City market hereinafter given.

84.2%. The ratio of average to peak receipts, commonly called "load-factor," is universally regarded as having a most vital effect on unit costs for the entire period, since the capacity must be adequate for the peak volume.[2]

The above figures demonstrating the peak movement are a conservative statement, for, in fact, the seasonal peak is not necessarily measured by the monthly figures but may as properly be measured by the weekly figures. Thus the highest weekly receipts of cattle at the Kansas City market in 1931 amounted to 51,222 head, as compared with average weekly receipts of 31,989 head, giving a ratio of average to peak receipts equal to 62.45%.

The full force of the combined standard weekly and seasonal fluctuations is sharply brought out by comparing the highest day's receipts of 30,002 head on October 12 to the average per day receipts of 5,380 head, which gives a ratio of average to peak volume of 17.9%.[3] In addition to these variations in volume, the conditions at the market are subject to variations in the character and the supply of and demand for livestock which substantially increase the burden of the salesman's work.

The evidence is uncontradicted that the business of selling livestock is one requiring skill and judgment, and indeed the Secretary has so found.[4] The evidence is also undisputed that neither in the case of a salesman nor a yardman can a market agency pick up a man for only a

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[2]America's Capacity to Produce (Brooking's Institution, 1934), pp. 99, 322; cf. FF. 115, R. 83-84.

[3]Several witnesses stated that the possible volume per salesman is substantially limited by the unevenness of receipts, but that although every effort has been made by the agencies to correct this condition, it is in fact one which only shippers and buyers can correct. See, *e.g.*, R. 219-220, 927.

[4]FF. 81, R. 62; FF. 65, R. 55; FF. 133, R. 92.

few days' work or a few weeks' work and operate efficiently, for skilled men demand and receive steady compensation.[5] Of course, there is some addition of extra salesmen and yardmen during peak periods, but the evidence is undisputed that the business cannot be carried on by the use of extra men only.

THE FINDINGS AND ORDER OF THE SECRETARY

The Secretary's Findings and Order (R. 23-130) contain a long narrative statement of the nature of the business, the manner in which conducted, the facilities employed, division of the business among the several agencies, facts claimed to be established by the audits and statistical studies, the ultimate conclusions to be drawn therefrom and the prescription of the rates to be charged on a headage basis, graduated according to size of the consignment in each species.

Many of the findings are unexceptional; others, it is believed, are unsupported by any evidence, or at least any evidence of a substantial character, and are contrary to the uncontradicted evidence in the case in particulars to be hereinafter noted.

The Secretary's ultimate conclusions as to the reasonable cost of conducting the business, allocated functionally, and as expressed in his Finding 163, are as follows:

> "163. A summary of the foregoing findings as to reasonable per head costs and reasonable profits for selling each species of livestock arriving at the Kansas City market is as follows:

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[5]R. 738; FF. 115, R. 84.

	Cattle and Calves	Hogs	Sheep
Salesmanship	$.1379	$.0353	$.0140
Yarding Salaries	.0750	.0300	.0080
Yarding Expenses	.0140	.0060	.0004
Office Salaries	.0525	.0300	.0100
Office Expenses	.0300	.0175	.0050
Business Getting and Maintaining	.0450	.0180	.0059
Administrative and General Expenses	.0330	.0200	.0050
Insurance	.0070	.0025	.0013
Interest	.0150	.0070	.0040
Total Cost	.4094	.1663	.0536
Profit			
To cover management	.0350	.0133	.0040
To cover uninsurable risks	.0035	.0014	.0004
Total reasonable cost and reasonable profit	$.4479	$.1810	$.0580"

As appears from the foregoing table, the largest single element of cost is that involved in salesmanship. As to this item, the findings admittedly depart from all cost evidence and determine the reasonable per head cost of salesmanship solely upon the basis of dividing the annual salary found to be reasonable for salesmen,[1] by the total number of head which the Secretary determined a salesman should sell per year.[2] There is no evidence that any sales-

[1] $4,000 for cattle salesmen, $3,000 for hog salesmen and $3,500 for sheep salesmen. FF. 143, R. 97.

[2] 29,000 head of cattle, 85,000 head of hogs and 250,000 head of sheep. FF. 143, R. 97.

man at the Kansas City yards in the year 1931, or in any other year, equalled the hypothetical performance assumed by the Secretary. On the contrary, as to each and every agency, including those having the greatest volume of business, the average number of head sold per salesman is materially less than the hypothetical standard set by the Secretary for the determination of the "reasonable cost" of salesmanship.[3] This is not, therefore, a case like the *Tagg* case where the evidence disclosed different degrees of performance, as measured by the number of head sold per year per salesman, out of which the Secretary, in the exercise of an informed judgment based upon actual experience, accepted as the standard of performance a performance actually realized,[4] but is a case in which he has based his finding upon a purely hypothetical performance not equalled by any. Nor is this rejection of actual performance as to any and the substitution of a purely hypothetical performance as to all predicated upon any evidence that the business of any agency is inefficiently or uneconomically conducted.

In respect of yarding salaries (FF. 144), yarding expenses (FF. 145), office salaries (FF. 146), office expenses (FF. 147) and administrative and general expenses (FF. 149), the cost tables constituting the evidentiary portion of these findings purport to be the cost figures as ascertained by the Government's accountants for the year 1931 as appearing in Government's Exhibit 115; and the ultimate finding in respect of each of these items purports to be based upon such accountants' cost figures

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[3]See Point IV, *post.*

[4]See *Tagg Bros. & Moorhead* v. *United States*, 29 Fed. (2d) 750, 755.

as therein set out. In some cases, the cost figures in respect of these items of expense as set out in the Secretary's findings correspond with the same functional costs as ascertained by the Government's accountants and, in others, particularly the salary functional costs, are materially less.[1] Findings which, on their face, purport to be based upon the Government's accountants' figures are not, therefore, when compared with such figures, based thereon, but have been reached by some undisclosed process of revision.

In respect of the item of business-getting and maintaining expenses, the finding (148), after setting out as evidentiary facts the Government's accountants' figures as to actual out-of-pocket expenses of the various firms for the year 1931 (other than salaries), completely disregards this and makes an ultimate finding that the reasonable cost of this item should not exceed 10% of the total reasonable costs and profits. In other words, this finding has no factual foundation whatever, but is a purely arbitrary figure based neither upon any evidence nor upon any evidentiary finding, but contrary to both. It apparently rests solely upon the belief on the part of the Secretary that too much is being spent for these purposes. What items have been excluded and what included, however, is not disclosed by the findings, although the Government's own accountants segregated this item into each of its several elements. In their original allocation there was included in the functional costs assigned to this item that proportion of the salaries of persons devoting a portion of their time to this function upon the basis of its estimated relation to their time as a whole. This part of the expense of "business-getting and maintaining" has been eliminated altogether, apparently in

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[1]See Point VI, *post*.

recognition of the fact that, because country work is done only at times when there is no work to be done at the yards,[3] the expense for this valuable service is only its out-of-pocket cost. Disregarding this omission, however, it requires but a simple mathemetical calculation to establish the purely arbitrary character of this 10% overhead figure for business-getting and maintaining. It appears (see pp. 139-140, *post*) that the resulting allowance is in the aggregate about 50% of the actual out-of-pocket expenses allocated by the Government's accountants, to this function, exclusive of salaries. To this function, the Government's accountants assigned the expense of country contacts and appraisals and a collection of miscellaneous expenses, including market reports, advertising, solicitation, maintenance of the Exchange, etc. The first named service, as appears from the foregoing statement of the nature of the business, is performed in large part, if not primarily, for the benefit of the grower as an aid to the procurement for him of a good price and, as we have hitherto pointed out, might properly be regarded as a part of the cost of sales rather than of getting business. The evidence is uncontradicted, and the Secretary does not deny, that the performance of this service is advantageous to the grower for whom the services of the market agencies are performed and for whose protection and benefit the Act was passed.[4] There is no evidence that more of this service is furnished than is required.[4] On the contrary, the uncontradicted evidence is that there is less of this service performed than the growers would like to have performed.[4] In respect of

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[3] *i.e.* on week ends and during dull seasons. See *ante*, pp. 29-30, and FF. 115, R. 84.

[4] See pp. 21-23, *ante*.

the other expenses, which may be more properly classed as expenses incident to getting and maintaining business, the Secretary has found that some expenses for this purpose are necessary,[5] but concludes that too much is being spent. These two classes of expenditures are substantially equal.[6] In other words, one-half of the total cost allocated by the Government's accountants under this heading is attributed to one of these services, and the other half to the other. The total allowance resulting from the application of the arbitrary 10% overhead figure is almost exactly one-half of the total cost.[7]

Since the allowance is on a percentage basis without any findings whatsoever as to what elements of cost are intended to be included, what to be omitted, or the extent to which any specific cost item has been reduced, it is purely arbitrary, and the expenses to be included therein are a matter of mere speculation.

If, for example, it is intended to include all of the cost of country contacts and appraisals, clearly a necessary item of expense in the interest of the grower, then it includes nothing for the remaining expenses in the nature of advertising, market reports, support of the exchange, etc., although it appears from the Secretary's own findings that expenditures for these purposes should, at least to some extent, be a charge upon the business. If it is intended to include the latter items, then it leaves nothing for expenses incurred in country contacts and appraisals. If it is intended to cover all, then it obviously contemplates a reduction in each, without finding or evidence as to the extent to which the cost of either is too high.

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[5]FF. 148, R. 109.
[6]See *infra*, p. 143.
[7]See *infra*, pp. 139-140.

EFFECT OF THE RATES PRESCRIBED

The Secretary's rates are made on a headage basis, varied as to each species, according to the number of head per consignment, some being above and others below the so-called "total reasonable cost and profit" per head, as found by the Secretary.[1]

After the order was entered, the appellants' accountant made an application of the prescribed rates to the actual business of each agency for the test year (1931) for the purpose of determining the revenues which would be yielded to it by such rates. This study, accompanied by a comparison of the revenues so yielded, with the actual cost of the services performed as ascertained by the Government's own accountants, was offered in evidence before the Court below.[1a] An analysis of this evidence will be found in that part of the argument which deals with the confiscatory and arbitrary character of the rates prescribed. It is sufficient at this point to make the following observations.

(1) In the aggregate, the rates provided are barely sufficient to cover the actual out-of-pocket costs of the business as conducted, exclusive of any compensation to the owners for the personal services performed by them[1b] (largely as salesmen) for which the Government accountant himself allowed

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[1]R. 122, 128.

[1a]Petitioner's Exhibit 1 (R. Vol. III, p. 1) compares the revenue yields of Tariffs Nos. 2 and 3 with those of the rates prescribed in the Secretary's order, for each species for each firm, by applying the respective rates to actual transactions in 1931. Petitioner's Exhibit 4 (R. Vol. III, pp. 5, 6) compares the yields so obtained with 1931 costs as found by the Government accountant (Govt. Ex. 115, R. Vol. III).

[1b]Pet. Ex. 4, R. Vol. III, p. 6, col. n; see table, p. 56, *post*.

$397,419.12[2] as an item of cost. These figures are exclusive of the two cooperative agencies. There were 136 "owners" performing such services in the year 1931.[3] This number divided into the Government's accountants' cost allowance for their services ($397,419.12) produces an average of $2,922 per owner, clearly less than the reasonable value of their services.[4] Under the Secretary's rates, the average amount left to compensate these owners for the personal services which they perform is reduced from this figure, itself inadequate compensation, to $486.62 per year.[5] For the two cooperatives the rates fixed would fail to yield the out-of-pocket cost of services performed by them in the amounts of $22,782.76 and $14,346.02 respectively.[6]

(2) The Secretary found that eleven firms handled over 50% of the business and that twenty-three firms handled over 75% of the business received by all (FF. 86, R. 68-71). The revenue at the prescribed rates would exceed the actual expenses incurred by the eleven firms in 1931, as found by the Government's accountants, exclusive of any compensation for personal services performed by

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[2]Pet. Ex. 4, sheet 1, col. c and c, sheet 2, col. c, R. Vol. III, pp. 5, 6.

[3]Govt. Ex. 115-B, R. Vol. IV; see Pet. Ex. 4, sheet 2, col. m, R. Vol. III, p. 6.

[4]This would appear to be self-evident from the foregoing description of their work, responsibilities and the degree of skill and judgment required (*ante*, pp. 17-29); and is confirmed when contrasted with the Secretary's own findings as to the reasonable value of the services of *hired* salesmen, which he put at $4,000 a year for a cattle salesman, $3,000 for a hog salesman and $3,500 for a sheep salesman (FF. 143, R. 97), although the record shows that many salaried salesmen earned more than these amounts (FF. 139, R. 95, 96).

[5]Pet. Ex. 4, sheet 2, col. n, R. Vol. III, p. 6; see p. 53, *post*.

[6]Agencies 10 and 36 (Pet. Ex. 4, sheet 2, col. j, R. Vol. III, p. 6).

their owners or for any return on the investment, by only $7,920.37.[7] For the twenty-three firms handling 75% of the business, the revenues at the Secretary's rates would exceed the actual out-of-pocket expense in 1931, exclusive of any compensation whatsoever for owners' services or for return on the investment, by only $25,025.38.[8] Each of the eleven firms had a volume large enough to admit of the most economical use of forces and time. There is no evidence that any of these eleven leading firms, accounting for 50% of the business, spent more than it was required to spend for the successful conduct of its business and in pursuit of the business for which it is operated, namely, to procure for the grower the best possible price. The same is true of the twenty-three firms accounting for 75% of the business. Nor is there any evidence that any of the smaller firms are inefficiently operated.[1]

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[7]Pet. Ex. 13, R. Vol. III, p. 16.

[8]Pet. Ex. 13, R. Vol. III, p. 16.

[1]An illustration of such an individual is the appellant, John M. Nichols (Firm No. 9). He handled a relatively small volume. He did practically all the work—selling, yarding and office work (Govt. Ex. 115 B, R. Vol. IV, p. 10). The average gross proceeds per head of the yearling cattle sold by him in 1931 was the highest of any agency and of heavy cattle the second highest (Res. Ex. 249). Manifestly his clients gave him good cattle to sell and he sold them to great advantage. Mr. Nichols has been engaged in livestock marketing more than 30 years. Much of that time he was the head buyer for a large packer—Morris & Company at Kansas City. He drew a very large salary as such a buyer until Morris & Company went out of business when purchased by Armour (Res. Ex. 204). In his case the government accountants included only $78.63 to represent compensation for selling these cattle and $283.08 for yarding the cattle; assigned the rest of his allowed compensation to other expense (Govt. Ex. 115B, Sheet 9, R. Vol. IV, p. 10). The gross proceeds of all livestock this appellant handled in 1931 amounted to $328,040.61 (Res. Ex. 243, col. b and c, R. Vol. III, p. 42), and of cattle alone, $113,172.55 (Res. Ex. 249, col. k, R. Vol. III, p. 43). The application of the Secretary's rates to his business in 1931 would have left nothing to him as return on investment or as compensation for his year's work, but instead would have produced *a net deficit,*

Tested by practical experience, therefore, the rates fail to yield the cost of performing the business as conducted and, so far as the record shows, as required to be conducted.

(3) As to no single agency, large or small, now in business, will the rates prescribed by the Secretary yield reasonable compensation for the services

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on the basis of the Government's accountants' report which eliminated certain expenditures, amounting to $285.79 (Pet. Ex. No. 4, col. j, R. Vol. III, p. 6). The competency of such a man cannot be questioned. He employed no specialty salesmen to assist him in his work. He had one extra cattle yardman to whom he paid a compensation during the year of $120.74, so it is apparent that he did most of the yarding of cattle himself. He employed two hog yardmen paying a total compensation of $1,144.15. His sheep were sold on a split commission basis. He paid to another firm for furnishing him with office facilities $1,800.00 (Govt. E[illegible] R. Vol. IV, p. 10). He used his own automobile and cha[illegible] up on his books only $76.00 of the year's expense in operating it. He sent out few circular letters and spent only $23.80 for specialties and novelties. Under the rates in effect in 1931, his net profit as return on investment and compensation for personal service was $1,572.62. He sold 15,252 head of livestock, making 1,919 separate transactions of sale for 1,240 owners. He bought 2,331 head of livestock, making during the year 102 separate purchases for 64 owners (Govt. Ex. 114-9, Schedule 3).

The reference to this individual illustrates (1) the confiscatory effect of the order upon an efficient individual operator, (2) one of the reasons why, although the functional unit costs set forth by the Government Accountant in Exhibit 115 varied widely between different agencies, no inference of inefficiency may be drawn from such variances, (3) an instance of individual operations by an appellant, repeated over and over again in the evidence, and (4) the effect upon such an individual of the Secretary's rates if he continues his representation of his clients in the future as in the past upon the same efficient, careful basis. And, until in a finding of evidentiary fact, the Secretary holds definitively that all the operations of such men are inefficient or uneconomic, or points out with certainty the particular expenses of which he complains, these men have had no actual day in court. They are called upon to explain or refute a vague, nebulous and indefinite statement or conclusion of ultimate fact which may or may not relate to them in particular but the result of the application of which is to produce a schedule of rates they are unable to apply and still maintain the status of efficient agents for the livestock producer.

> performed, and as to many they will result in substantial loss. This is particularly true of those firms having the largest volume and receiving for their shippers the highest prices,[1] and of those in which employees perform all of the work other than general management.[2]

All of the ultimate facts stated above were fully supported by the evidence offered by the appellants' accountant in the court below.

The Government made no effort to controvert this showing, which is, on the basis of the Government's accountants' own figures, incontrovertible. On the contrary, its position, as evidenced by its answer, is that it is immaterial whether the rates prescribed would return the out-of-pocket cost of *any* agency conducting business at the yards, for in its answer it averred (VIII, R. 144):

> "Defendants say that it is irrelevant and immaterial to the validity of the Secretary's Order and to this suit whether or not the gross yield of rates and charges prescribed in the Order, if applied in 1931, would have been less than the cost of operation of the business of any one petitioner during that year."

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[1]See Point I, pp. 54-55, 57, 58, *post*.

[2]Agencies 10, 36, 54 and 12 (Govt. Ex. 115B, R. Vol. IV, pp. 129, 134, 69, 13).

SPECIFICATION OF ERRORS

The Court below erred:

1. In failing and refusing to hold that each and all of the rates prescribed in the Order of the Secretary of Agriculture of June 14, 1933, are confiscatory of the property and livelihood of the appellants and of each of them and in failing and refusing to hold that the enforcement of such rates would deprive the appellants and each of them of their property and livelihood without due process of law and in violation of the Fifth Amendment to the Constitution of the United States.

2. In holding that the findings and Order of the Secretary are supported by the evidence, and in failing to hold and conclude to the contrary.

3. In holding that the findings and Order of the Secretary are supported by substantial or any evidence, and in failing to hold and conclude to the contrary.

4. In holding that the Order of the Secretary and the respective rates fixed thereby are not unjust, unreasonable, arbitrary and in violation of the provisions of the Packers and Stockyards Act.

5. In holding that the Order of the Secretary and the respective rates fixed thereby are not unjust, unreasonable, arbitrary and in violation of the provisions of the Packers and Stockyards Act in the absence of a finding, or evidence to support a finding, by the Secretary of Agriculture of the existence of a monopoly or other restraint destructive of competition.

6. In holding that the conclusions and estimates of the Secretary of Agriculture as to the amount of livestock of the different species that an individual livestock salesman ought to be able to sell efficiently in a year were supported by substantial evidence; and in failing to find and hold that these conclusions were contrary to the evidence and were unrelated to the actual past performance of any appellant.

7. In holding that the Order of the Secretary of Agriculture is valid and not in violation of the Packers and Stockyards Act of 1921, and in failing to hold and conclude to the contrary.

8. In failing and refusing to hold that the Order of the Secretary is arbitrary, unreasonable and in excess of his power and authority under the Packers and Stockyards Act of 1921 in that it fails to relate the allowance for business-getting and maintaining expenses to the amounts actually expended by any appellant during the test periods for these purposes.

9. In not holding that the action of the Secretary in refusing to give consideration to the evidence as to the reasonable value of the personal services of the owners of the respective businesses of appellants was arbitrary and unreasonable.

10. In not holding that the findings and Order of the Secretary are illegal and void by reason of the arbitrary and capricious manner and method employed in preparing the functional cost tables and in calculating the various components of the rates in his said findings, in that, among

other things, he arbitrarily and capriciously ignored and eliminated therefrom numerous salary and non-salary items of cost.

11. In failing and refusing to hold that the Secretary exceeded the power and authority conferred upon him by the Packers and Stockyards Act of 1921 in that the maximum rates fixed by the Order are unjust, unreasonable, arbitrary, invalid and illegal because of the employment in the formulation of said rates of hypothetical costs in the place of actual costs of typical market agencies.

12. In failing and refusing to hold that the Secretary acted illegally in ignoring and discarding expenses incurred by appellants and not covering them into the maximum rates, although no finding was made or could have been made on the evidence that any of said expenses were wasteful, extravagant or unnecessarily incurred.

13. In not finding that the Secretary, by the methods of rate making employed in the formulation of his Order, unduly and illegally invaded the right of management and of freedom of ownership of the property of the appellants and of each of them.

14. In not holding the actions of the Secretary to have been arbitrary, capricious and violative of due process of law in that he based his findings of evidentiary fact as to costs upon his own untrammeled judgment and not upon the evidence, thereby denying appellants the opportunity to test, explain or refute the same.

15. In sustaining the motion of the Secretary to strike Section IV of the petitions of the appellants.

16. In failing and refusing to give appellants an independent review of both the facts and the law and to weigh the evidence.

17. In failing to accord due and proper weight to the evidence, and in failing to hold that the conclusions and findings of the Secretary are unsupported by any substantial evidence and are contrary to the facts established by the evidence.

18. In failing and refusing to hold that the Order of the Secretary of Agriculture was invalid, illegal and made without jurisdiction because made in the absence of evidence to support a finding by him that the existing rates were unjust or unreasonable.

19. In failing and refusing to hold that the administrative proceedings were irregular and not in conformity with the statute, and that they denied appellants and each of them due process of law because appellants were denied individual hearings, full hearings, hearings upon tentative orders, and any hearing at all before the Secretary of Agriculture himself.

20. In failing and refusing to hold that the Secretary of Agriculture exceeded the power and authority conferred upon him by the Packers and Stockyards Act of 1921 in employing, in the formulation of the maximum rates, hypothetical costs which were less than the actual costs of any typical agency, and which were based upon assumed conditions which the Secretary of Agriculture expected might exist at some future time rather than upon the actual experience of the appellants, or some of them, as market agencies.

SUMMARY OF ARGUMENT

POINT I—The ruinous effect of the rates upon the business of the appellants, severally and collectively, demonstrates that the order is arbitrary or confiscatory or both and should be set aside irrespective of the propriety of allowances for particular components of the rate.

POINT II—The order is arbitrary and based upon a misconception of the powers and duties of the Secretary, upon a departure from settled and recognized standards, both of reasonableness and of administrative authority, and upon an interpretation of the powers of the Secretary which, if correct, would give rise to a serious constitutional question as to its validity, which should be avoided.

POINT III—The findings and order contained no legally sufficient finding that the existing rates are unreasonably high.

POINT IV—The Secretary's allowance for salesmen's services is based wholly on speculation and hypothesis, is arbitrary and capricious, unsupported by evidence, and based upon an erroneous conception of the law and of the Secretary's powers.

POINT V—The allowance for business-getting and maintaining expense is based upon speculation and hypothesis, is arbitrary and capricious, and is not supported by evidence or finding.

POINT VI—The allowances and findings for yarding and office salary costs are invalid because based upon arbitrary, unsound and capricious functional cost allocations.

POINT VII—The administrative proceedings were irregular, not in conformity with the statute, and denied appellants due process.

ARGUMENT.

POINT I.

THE RUINOUS EFFECT OF THE RATES UPON THE BUSINESS OF THE APPELLANTS, SEVERALLY AND COLLECTIVELY, DEMONSTRATES THAT THE ORDER IS ARBITRARY OR CONFISCATORY OR BOTH AND SHOULD BE SET ASIDE IRRESPECTIVE OF THE PROPRIETY OF ALLOWANCES FOR PARTICULAR COMPONENTS OF THE RATE.

1. The ruinous and confiscatory character of the rates is properly pleaded individually and with particularity as to each apellant and in effect conceded by appellee's answer.

Fifty separate, individual petitions in equity were filed in the court below in this proceeding. The cases were consolidated in the court below for trial and all further proceedings, without prejudice, however, to the right of the appellants and to each of them to several and individual presentation, consideration and determination of the issues in each of the fifty causes which are several in character and individual to each separate action (R. 163-164). But one case has been docketed in this Court on appeal, since the court below entered a joint decree in the cases as consolidated (R. 166-168).

Only the petition in equity in the *Morgan* case appears *in extenso* in the record (R. 1-122), but the parties have stipulated in the record (R. 130-B) that the petitions in equity in all the remaining cases are identical with that in the *Morgan* case, except for the name of the plaintiff or

plaintiffs and the amounts set up in the allegations respecting confiscation and the ruinous character of the rates as applied to each appellant severally and individually.

The petition in the *Morgan* case in paragraph VII thereof makes specific allegations in respect of the failure and refusal of the Secretary to make proper allowances for proper costs and expenses of the business (R. 13-18). Paragraph VIII thereof expressly alleges that the challenged rates are confiscatory as to the appellant; that the gross revenue yield of the challenged rates as applied to the business of the appellant for the year 1931 would be less in a stated amount, than the costs of the appellant for that year on the basis of the cost evidence of the accountant for the appellant, and less in amount than the appellant's total costs of operation recognized by the accountant for the Government; and that the challenged rates would be individually and severally confiscatory in respect of each species and weight of livestock involved. There are further allegations as to the aggregate effect of the rates upon all the appellants, upon the most efficient appellants and upon the cooperative agencies (R. 18-20). The record shows that each appellant in his petition made precisely the same particular allegations as to himself or itself, excepting that the particular amounts differed. These particular amounts as to each appellant as alleged in his petition are set out *in extenso* in the stipulation appearing in the record at R. 130-B.

The pleadings of the appellants, therefore, are not subject to the objection that they are based upon mere allegation of aggregate effect upon all;[1] and they fully comply

[1]See *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, 448.

with the requirements respecting specification and particularity.[2]

The Government filed a joint answer to all of the petitions. In respect of paragraph VIII of the petitions, which, as stated, contains the particular allegations as to ruinous and confiscatory effect, the answer, while denying this upon information and belief, further avers:

> "that none of the facts alleged therein is relevant or material to the validity of the Secretary's Order, or to this suit, and that the lawfulness of the rates and charges prescribed in said Order is not to be determined by whether or not each petitioner could earn a sufficient amount thereunder to cover costs as high as those heretofore incurred." (R. 144).

and further

> "Defendants say that it is irrelevant and immaterial to the validity of the Secretary's Order and to this suit whether or not the gross yield of rates and charges prescribed in the Order, if applied in 1931, would have been less than the cost of operation of the business of *any one* petitioner during that year." (R. 144. Italics added.)

Again, in answering paragraph VII of the petitions, which challenged the legality and sufficiency of the allowances for particular items contained in the rate order, the answer avers:

> "Defendants admit that the reasonable unit costs found by the Secretary are lower in most instances than those costs actually incurred by petitioner market agencies, and defendants say that the purpose of the inquiry was not to construct a rate order

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[2] *Public Service Commission* v. *Great Northern Utilities Co.*, 289 U. S. 130, 136, 137; *Beaumont, S. L. & W. Ry.* v. *U. S.*, 282 U. S. 74, 88, 89.

based upon costs actually incurred in maintaining an overly-competitive market, but rather to determine what costs are reasonable." (R. 142).

In view of these averments of the answer and of the absence of any finding by the Secretary that the rates would be compensatory as to any appellant, and in view of the failure of the appellees to introduce any evidence in the court below to show that they would be compensatory,—although appellants introduced evidence to show that they would be confiscatory and ruinous as to each of them—it can fairly be taken as admitted that the rates are ruinous and confiscatory as to each and every appellant individually.

2. There is no finding either by the Secretary or by the court that the rates would not be confiscatory or would be compensatory as to any appellant; and the court below has in substance found that they are confiscatory.

The Secretary made no finding as to the effect of the rates upon the business of the appellants or any of them. The majority of the court below in its original opinion concluded that on the issue of confiscation the order of the Secretary was sustained by the weight of the evidence[1] (R. 152), but upon rehearing the majority of the court pointed

[1]The Court did not, however, make any specific findings on the issue of confiscation as to any of the petitioners and its general conclusion was obviously influenced by the view that it was without authority to disturb the findings of the Secretary (R. 152), apparently on the theory expressed in the concurring opinion of Judge Van Valkenburgh that the Secretary is given by the statute "almost dictatorial power" (R. 157). Indeed, on no other theory could the court below, in the light of the undisputed facts, have held as it did (R. 152) that "the rates and charges fixed by the Secretary's order adequately provide for costs and for a return on invested capital and for profits as to all petitioners who have shown that their agencies are efficiently conducted."

out that the Secretary's order was not based upon actual experience but upon "hypothetical costs based not upon present, but upon assumed conditions which he expects may exist at some future time"; that "the drastic reduction of advertising and other costs, essential to getting and maintaining business, gives scant consideration to the reasonable necessities of the situation as disclosed by experience"; and that the court feared that "the effect of these methods employed may, as suggested by petitioners, tend to weaken, and ultimately to destroy, this market by diverting business to other more favored markets and agencies, and may tend further to the undue restriction of agencies enabled to operate profitably" (R. 165, 166). Although the majority of the court nevertheless concurred in a dismissal of the bills (having an erroneous view as to the judicial authority),[2] we think it fair to say that the final conclusion of the majority of the court, on rehearing, upon the issue of the effect of these rates upon the appellants, in so far as the record discloses any conclusion upon that question, is that they are ruinous and confiscatory. We do not perceive how any other conclusion could have been reached on the pleadings or the evidence, especially the uncontradicted evidence now to be mentioned.

3. The ruinous and confiscatory effect of the rates as to all of the appellants, severally and collectively, is established by all of the evidence of record upon the point, which is undisputed.

The only new evidence introduced in the Court below was that of the appellants' accountant, Roberts, who intro-

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[2]*Oklahoma Operating Co.* v. *Love*, 252 U. S. 331, 335; *Ohio Valley Water Co.* v. *Ben Avon Borough*, 253 U. S. 287, 289; *Prendergast* v. *New York Telephone Co.*, 262 U. S. 43; *Crowell* v. *Benson*, 285 U. S. 22, 46, 56-57, 60.

duced thirteen tabulations which appear in the printed volume of original exhibits exemplifying the ruinous and confiscatory effect of the rates upon the appellants and all of them. From this evidence it appears:

A. AGGREGATE NET OWNERS RETURN ON BASIS OF PRESCRIBED RATES TO 61 FIRMS DOING BUSINESS IN 1931.

Petitioner's Exhibit No. 4 (R. Vol. III, p. 5, 6) shows the effect of the prescribed rates upon each of the 61 individual firms doing business in 1931 and gives aggregate figures for the 61 firms combined. This exhibit, as in the case of the other Roberts exhibits to be referred to, is not a new accounting study but merely an application of the new rates to the 1931 volume of business of the firms (as that volume is established by the Government's own accounting witnesses), and a comparison of the returns to the agencies and owners, so reached, with the realized cost for *1931* as found by the Government's own accountants.[1] For this purpose there were excluded from the aggregate costs so found the amounts allowed therein as compensation for owners, in order to make a true comparison, as to each agency and in the aggregate, between revenue under the Secretary's rates, and the amount left, if any, after paying expenses, for owner's compensation. The amounts so eliminated are shown

[1]In applying the Secretary's rates to the volume of business of each of the firms, in 1931 as established by the Government's own accountant, the actual revenues from order buying and from "seconds" were used instead of the Secretary's rates, since only the regular selling rates are under attack and both the buying rates and the selling rates on "seconds," as fixed by the Secretary, are believed to be higher than the traffic will bear. The adjustments so made (Pet. Ex. 4, col. h, R. Vol. III, pp. 5-6) are, however, inconsequential in amount, either in the aggregate or as applied to particular agencies (compare Col. G and H, Pet. Ex. 4, *supra*) and their elimination or inclusion does not substantially affect the figures hereinafter set forth.

in respect of each of the several species under Column C (Pet. Ex. 4, R. Vol. III, pp. 5-6) and the resulting out-of-pocket costs, exclusive of owners' compensation, in Column D.

For the sixty-one firms, the prescribed rates will yield an aggregate net return, before any compensation to owners for management, personal service or return on the investment, of $78,125.09 (Pet. Ex. 4, Vol. III, p. 6, Col. J). The Secretary allowed as return on the investment $54,394.81 (Pet. Ex. 4, R. Vol. III, p. 6, Col. K). Deducting this from the aggregate net revenue leaves $23,730.28, equal to $174.50 per year (Pet. Ex. 4, R. Vol. III, p. 6, Col. N), or forty-eight cents per day, for each of the one hundred thirty-six owners, a return clearly confiscatory, ruinous and wholly unreasonable.[2]

B. Return on basis of prescribed rates to the 11 firms doing 50% of the selling business.

The report of the Secretary finds that 11 firms handled over 50% of the business and received over 50% of the revenues for the years 1929 and 1931 (FF. 86, 88, R. 68-71, 71-73). According to tabulations made by the witness Roberts upon the same basis as the aggregate return figures just discussed, it appears that the selling rates prescribed by the challenged order of the Secretary when applied to the aggregate operations of these eleven firms for the year 1931 will yield only $7,920.37 for return on investment and

[2]If revenues from buying and from selling "seconds" had been included at the Secretary's rates instead of those actually in effect (see footnote preceding page) the net return would have been increased by $47,430.27, equivalent to $348 per annum per owner, or less than $1 per day, thus establishing the inconsequential effect of using the Secretary's rates or the old rates for these particular services.

compensation to owners. When the Secretary's allowance of $28,560.65 for return on investment is deducted, the prescribed rates give a deficit of $20,640.28 before any compensation to owners.[3]

C. Effect of prescribed rates on revenues of 23 firms doing more than 75% of the business and securing more than 75% of the total market revenue.

A further calculation introduced by the witness Roberts relating to the 23 firms which, as found by the Secretary, did more than 75% of the business (R. 69-71) shows that the application of the prescribed rates to the 1931 business of these firms would yield only $25,025.38 for the firms as an aggregate for return on investment and compensation to owners. When the Secretary's allowance of $40,552.32 for return on investment for these 23 firms is deducted, the prescribed rates give a deficit of $15,526.94 before any compensation to owners.[4]

D. Individual net Owner Return on Basis of Prescribed Rates.

From undisputed evidence consisting of exhibits of the witness Roberts and from other undisputed evidence contained in the record, the appellants have prepared the table which appears on the following page which shows, as to each agency now in business and on the basis of the business for 1931, the amount of income per owner or loss per agency which would be realized or sustained under the challenged rate, the volume handled by the firm and the number of owners.

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[3]Pet. Ex. 13, R. Vol. III, p. 16.
[4]Pet. Ex. 13, R. Vol. III, p. 16.

OWNERS' COMPENSATION UNDER SECRETARY'S RATES FOR FIRMS NOW DOING BUSINESS ON KANSAS CITY MARKET

This table shows the amounts, if any, available as compensation to owners of firms presently engaged in selling on commission at the Kansas City market, obtained by applying the Secretary's rates to the volume of business actually handled in 1931. The first column of figures showing the total value of livestock bought and sold is included in order to reveal the absence of relationship between volume handled and net yield per firm or per owner.

Firm No.	Name of Firm	Total Value of Livestock Bought & Sold (Res. Ex. 243, R. Vol. III, p. 42)	Net Yield to Firms Available for Owners' Compensation* (Pet. Ex. 4, R. Vol. III, p. 6)	Number of Owners (Pet. Ex. 4, R. Vol. III, p. 6)	Compensation per Owner (Pet. Ex. 4, R. Vol. III, p. 6)
44	W. M. Leitch Sheep Commission Company	$1,324,984.46	$ 8,495.29	2	$4,247.65
83	Burlington Livestock Commission Company	5,656,574.78	20,403.72	5	4,080.74
43	Knight & Tice Sheep Commission Company	527,105.48	2,860.39	1	2,860.39
18	Haggart-Wilson Livestock Commission Company	2,870,100.80	8,964.65	4	2,241.16
55	Wright and Baucus	2,870,335.76	4,445.06	2	2,222.53
42	Long-Perry Livestock Commission Company	2,616,731.66	6,308.19	3	2,102.73
48	Poole-Dempsey-Rutherford Commission Company	1,968,143.19	6,195.29	3	2,065.10
15	Elliott, Swain & Company	772,168.09	4,065.85	2	2,032.93
7	Maxwell-Furnish Livestock Commission Company	1,117,496.76	3,801.67	2	1,900.84
17	Gladish Livestock Commission Company	523,375.34	3,159.60	2	1,579.80
34	Warren Cummings Livestock Commission Company	3,949,562.56	1,564.32	1	1,564.32
16	Farrar, Davis & Campbell	1,194,216.00	4,523.71	3	1,507.90
6	Lewis and Flournoy	751,686.98	2,985.94	2	1,492.97
76	Greer & Company	721,572.70	1,443.47	1	1,443.47
30	Tamblyn Commission Company	1,067,029.08	2,481.16	2	1,240.58
46	National Livestock Commission Company	8,115,270.20	5,620.92	5	1,124.18
77	Inman-Hutton Livestock Commission Company	1,091,727.95	3,307.75	3	1,102.58
53	Ehrke-Martin Livestock Commission Company	1,794,498.87	2,164.08	2	1,082.04
84	Cassidy-Southwestern Commission Company	3,564,942.66	2,844.93	3	948.31
60	H. Theis & Sons	1,057,248.14	3,745.13	6	624.19
23	F. O. Sanders Livestock Commission Company	1,827,059.89	506.01	1	506.01
61	Ham Knighton Livestock Commission Company	375,221.66	382.78	1	382.78
26	Wester Bros. & Smith Commission Company	1,449,650.61	271.80	2	135.90
13	Crider Bros. Commission Company	2,830,142.29	85.12	3	28.37
29	Stagner, Peirronet & Willis Commission Co.	1,164,881.95	82.76	3	27.59
82	Wilson-Egan & Co.	5,245,885.21	101.09	5	20.22
14	Chas. Dixon Commission Company	2,078,889.33	170.87**	3	
9	John M. Nichols Livestock Commission Co.	328,040.61	468.24**	1	
63	Martin, Blomquist & Lee Commission Company	8,600,811 51	740.20**	7	
75	W. E. Curtis & Company	1,235,468.91	1,042.83**	1	
62	Laird Bros. Commission Company	1,415,170.40	1,221.39**	2	
20	Kansas City Livestock Commission Company	1,439,986.96	2,325.36**	1	
65	Moffett Commission Company	1,807,585.09	2,365.17**	2	
70	Kile Commission Company	2,355,234.93	2,384.22**	1	
25	Stuart-Robinson-Hoover Company	2,679,869.04	2,607.34**	2	
59	Swift & Henry Livestock Commission Company	10,226,699.02	2,676.99**	4	
71	Ryan-Robinson Commission Company	3,365,689.02	3,776.86**	5	
4	Ragland-Storts & Company	1,803,902.69	3,998.09**	2	
73	Witherspoon Livestock Commission Company	3,551,657.52	6,171.41**	4	
54	John Clay & Company	12,267,430.93	8,668.17**	3	
12	Bowles Livestock Commission Company	3,175,243.62	12,370.51**	—	
36	Farmers Union Livestock Commission Company		16,818.54**	—	
10	Producers Commission Association		25,631.41**	—	

*These figures are obtained by deducting from each firm's total revenue under the Secretary's rates its costs for 1931 as found by the Government's accountants (exclusive of the allowance made by those accountants for owners' compensation) and the return on investment allowed by the Secretary.

**Indicates deficit.

The net owner income referred to in this table is inclusive of all services of owners. The record shows, as previously pointed out, that practically all owners are actively engaged in the business, mainly in salesmanship and management and incidentally doing yarding and office work.

The results thus appearing may be summarized as follows:

(1) Of the 43 firms now in business in respect of which it was possible to make the calculation and which are all included in the tabulation, it appears that 17 would realize no owner income, but, on the contrary, would sustain losses ranging from $25,000 down to $170.87. In respect of these 17 firms, there can be no contention that they are the marginal companies. On the contrary, they include the largest firms in the business, John Clay & Company (Agency No. 54) with an annual volume in excess of $12,000,000, Swift & Henry Livestock Commission Company (Agency No. 59) with an annual volume of $10,000,000,[1] and Martin, Blomquist & Lee Commission Company (Agency No. 63) with an annual volume of $8,000,000. Included among these firms showing a loss are the two cooperative companies (Agencies Nos. 10 and 36) which also have very large volumes of business. There is neither finding nor evidence that these agencies or any of them are inefficient or wasteful. On the contrary, they are among the most efficient, both as to sales performance (See Appendix B) and in the results obtained for shippers whose agents they were, as measured by the prices per head received. For the year 1931, the average price realized per head by all firms on yearling cattle ranged from a low of $24.92 to a

[1]These two firms rank respectively first and second in the volume of business done.

high of $42.51, and for heavy cattle from a low of $36.52 to a high of $68.94.[2] The per head realization of these firms, showing a deficit under the Secretary's rates, was as follows:[3]

Agency No.	Yearling Cattle	Heavy Cattle
54	$35.71	$61.06
59	39.57	67.31
9	42.51	68.52
63	36.48	63.91
4	36.39	61.55
75	39.12	62.90
20	34.71	58.21
25	37.12	63.87
12	33.56	57.15
14	33.03	55.33
62	32.68	54.06
65	34.86	57.88
70	35.66	53.14
73	31.45	51.47

It will be observed that the three largest firms suffering a deficit (John Clay & Company—Agency 54, Swift & Henry—Agency 59, and Martin, Blomquist & Lee—Agency 63), rank high in sales realization as they do in sales performance, as will hereinafter appear.

(2) Of the next 24 firms it appears that 8 will receive net income per owner under $1,000; that is, running from $20.22 up to $948.31. The next 10 will receive net owner incomes between $1,000 and $2,000, and the next 6 will receive net owner incomes between $2,000 and $3,000.

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[2]Res. Ex. 249, R. Vol. III, p. 43.

[3]This information is not contained in the record as to firm No. 71, nor as to the two cooperatives (Nos. 10 and 36), who refused to disclose this information.

When it is borne in mind that these are not returns to non-productive owners but are returns to owners who actively perform the most important functions of the business and devote the whole of their time to it, the confiscatory character of the order is plainly apparent, especially in the light of the Secretary's findings as to what constitutes reasonable salaries for salesmen. The reasonable salaries prescribed by him—$3,000 for a hog salesman, $3,500 for sheep salesman, and $4,000 for a cattle salesman—are in every instance in excess of the amounts to be realized by any of the owner-salesmen in these 24 firms under the challenged rates. There can be no contention that these firms are exclusively marginal firms, for they include one with a volume in excess of $8,000,000, one with a volume in excess of $5,000,000, two with a volume in excess of $3,000,000, four with a volume in excess of $2,000,000, and ten with a volume in excess of $1,000,000.

(3) The two remaining firms (Burlington Live Stock Commission Company—Agency 83—and W. M. Leitch Sheep Commission Company—Agency 44) each show net owner income under the Secretary's rates slightly in excess of $4,000 per annum. The Burlington Live Stock Commission Company, which would receive a calculated net income of $4,080.74 per owner, has principally an order buying business.[2] As previously pointed out, the question in

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[2]As appears from Government Exhibit 115 pp. 65, 66 (R. Vol. III, pp. 31-34), this company sold 45,799 head of cattle and bought 76,308, its buying operations exceeding its selling operations by almost 50%. The same Exhibit discloses that in respect of all the other agencies engaged in selling, cattle sold exceeded those bought, in no event the cattle bought equaling much more than 50% of those sold and in most instances being much less, and that for all the agencies combined buying amounted to only 22% of total head handled. Moreover, the expense of selling greatly exceeds that of buying, notwith-

this case is the sufficiency of the rates for selling and not those for buying, the buying rates not being under attack.

The other agency (Leitch), which would receive a calculated net owner income of $4,247.65, engaged solely in the business of selling sheep,[3] and a calculation of the return to it is no fair test of the workings of the Secretary's rate schedule as a whole, and no test whatsoever of the rates on either cattle or hogs. The value of the services of the two owners of this agency was conservatively appraised by the respondents' appraisers at $5,000 each.[4] No evidence controverting such appraised value of their services was offered by the Government. This firm handled 267,391 head of sheep, on which the sales realization was $1,324,984.46, the remittance of which it was required to finance by the use of capital or credit, in advance of payment. It is believed that, in view of the foregoing, the Secretary's rates are confiscatory as to the owners of this agency,[5] but if not, the compensation per owner of this exclusive sheep agency is no test of the sufficiency of the Secretary's rates as to other selling agencies, none of which,

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standing that the Secretary established a uniform rate for both. This is so, among other reasons, because (1) there is substantially no yard expense attributable to buying; (2) comparatively small country contact or appraisal expenses and (3) smaller business getting and maintaining expenses generally (Compare R. 328-333, 358-362, with R. 201-210, 238-239, 1038-1044 and with pp. 15-27, *ante*). Moreover the sales performance of this company, as measured by the headage sold per salesman, is not above the average and is below that of the leading selling firms (Appendix B). The relatively larger, although at the same time modest, returns per owner to this agency are demonstrably not attributable to its selling business but to its buying business, the rates on which are not involved.

[3]Govt. Ex. 115 B, R. Vol. IV, p. 54.

[4]Res. Ex. 204.

[5]Compare the compensation per owner under the rates prescribed in the *Tagg* case (pp. 65-69, *post*).

as disclosed by the foregoing review, has received adequate compensation per owner and many of which, including the largest and most efficient firms, would fail to meet the expense of conducting the business at the Secretary's rates.

4. The evidence in the record as to the ruinous and confiscatory effect of the challenged rates has been confirmed by the event.

As previously pointed out (pp. 13-14, *ante*) nine of the fifty appellants have retired from business since the institution of this suit, and one (Firm No. 37) no longer conducts business in the usual manner. This appears by the affidavits introduced by these firms for the purposes and under the authority discussed at page 14, *ante*. Owner income, or loss per agency, as of the year 1931 at the Secretary's rates for these ten firms is shown by the table on the following page.

It will be observed that, as to all except the first, the Secretary's rates either failed to equal costs actually incurred or afforded wholly inadequate compensation to the owners.

The one firm showing a substantial net yield at the Secretary's rates (Harry Kennaley Commission Company—Agency 51) has also gone out of business since this appeal was taken. The surety for this agency, compelled to make good a default on the agency's bond, has moved by its attorneys to be substituted as a party appellant. It is pointed out in this motion that the agency's failure and default was due to poor management, largely resultant upon its failure to book its costs. Consequently, the accuracy of the assumed net yield may well be doubted. In any event, since this agency is out of business, it is immaterial, upon

OWNERS' COMPENSATION UNDER SECRETARY'S RATES FOR FIRMS NO LONGER DOING BUSINESS ON KANSAS CITY MARKET

This table shows the amounts, if any, which would have been available as compensation to owners of firms which have discontinued business since the beginning of the present suit, obtained by applying the secretary's rates to the volume of business actually handled in 1931.

Firm No.	Firm Name	Total Value of Livestock Bought & Sold (Res. Ex. 243, R. Vol. III, p. 42.)	Net Yield to Firms Available for Owners' Compensation* (Pet. Ex. 4, R. Vol. III, p. 6.)	Number of Owners (Pet. Ex. 4, R. Vol. III, p. 6.)	Compensation per Owner (Pet. Ex. 4, R. Vol. III, p. 6.)
51	Harry Kennaley Commission Company	$2,662,896.02	$11,095.78	1	$11,095.78
66	Jay D. McCormack Commission Company	141,151.17	970.18	1	970.18
79	Les White Livestock Commission Company	447,551.79	714.95	1	714.95
1	Fred O. Morgan Sheep Commission Company..	142,790.80	542.92	1	542.92
33	H. F. Carnes Livestock Commission Company..	87,911.80	403.88	1	403.88
37	Link Fasken Livestock Commission Company..	60,593.51	402.50	1	402.50
5	H. H. Klecker Sheep Commission Company	987,827.74	356.79	1	356.79
72	Welch Commission Company	99,886.35	225.01	1	225.01
78	W. G. Land Livestock Commission Company..	554,617.58	979.97**	1	
35	Drumm-Standish Commission Company	3,198,262.00	1,139.49**	10	

*These figures are obtained by deducting from each firm's total revenue under the Secretary's rates its costs for 1931 as found by the Government's accountants (exclusive of the allowance made by those accountants for owners' compensation) and the return on investment allowed by the Secretary.

**Deficit.

the issue of confiscation as affecting the rates for the future whether the order is confiscatory as to it or not, so far as the other appellants are concerned. Its sole interest, and that of the bonding company, is in the impounded rates. Moreover, the sufficiency of the Secretary's rates cannot be judged by the operations of this firm, which is in no respect typical or representative. This agency was an inconsequential factor in the cattle business, having bought and sold but 22,495 head of cattle and calves[6] on which it had the distinction of having obtained an average price per head of heavy cattle for its growers of $39 a head, as against a low of $37 per head, a high of $68 a head and an average of $60 a head for the agencies as a whole.[7] It was primarily engaged in the sale of hogs, in which it apparently ranked first, having in 1931 sold 159,184 hogs.[8] But as its proprietor testified at the hearing, he had "had the experience of receiving so many hogs in the past three months that I did not give a good many of them the right kind of selling, feeding and handling of them." (R. 578). The favorable showing of this agency, supposing the calculated yield to be correct, was obviously made at the expense of its clients. The correctness of the calculated yield is cast in doubt by the agency's subsequent default on its obligations and its failure to book costs, as is evidenced by the motion of its surety.

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[6]Govt. Ex. 115, pp. 65, 66, R. Vol. III, pp. 31-34.
[7]Res. Ex. 249, R. Vol. III, p. 43.
[8]Govt. Ex. 115, p. 9, R. Vol. III.

5. Yield of the rates as shown by the evidence in this record is in decided contrast to the yield of the rates as shown in the *Tagg* case by similar evidence in that record.

In contrast with the patently ruinous and confiscatory effect of the challenged rates in this proceeding upon the business of all of the market agencies at the Kansas City stockyards are the rates sustained by this Court in the *Tagg* case.

In that case the Secretary based his rates not on any mere theoretical estimation, but on actual experience as disclosed by the evidence.[1] In the record in that case there appeared exhibits drawn upon the same plan as those of the witness Roberts heretofore referred to herein, showing the calculated yield of the challenged rates based upon the business and costs of the test year. The table from the Tagg Brothers record is set out upon the opposite page.[2] It shows that the owners sustaining a loss are a very decided minority, 18 out of 130; that about half of the owners received a compensation in excess of $3,000, going up from that figure to a high of $13,450 per annum.

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[1] 29 F. (2d) 750.

[2] This court will take notice of the records of cases in this court. *National Fire Ins. Co.* v. *Thompson*, 281 U. S. 331, 336.

TAGG BROS. & MOORHEAD *v.* UNITED STATES

EXHIBIT 123-A (Record, pp. 824-827)

SCHEDULE OF EARNINGS INDIVIDUAL OWNERS UNDER SECRETARY'S ORDER EXCLUDING INCREASE TO SPECULATORS AND INTEREST ON INVESTMENT

OMAHA LIVE STOCK EXCHANGE, OMAHA, NEBRASKA

INCOME TO OWNERS, YEAR 1925

This schedule is compiled using the income that would have been received if the Secretary of Agriculture's Order had been in effect excepting that portion that allowed for an increase in Dealers & Speculators Commissions, and using the adjusted expense as shown in Schedule 2, except the actual owners' salaries are used in place of the 5-5 and 4 basis.

Owner	Firm	Income per owner
Thos. H. Lindley	Lindley-Cahow Commission Co.	$13,450.98
W. F. Bavinger	Cox-Jones Commission Co.	13,064.90
E. W. Cahow	Lindley-Cahow Commission Co.	12,809.15
W. T. Cox	Cox-Jones Commission Co.	11,932.45
D. C. Johnson	Mutual Live Stock Commission Co.	10,586.75
J. T. Sullivan	Mutual Live Stock Commission Co.	10,586.74
W. W. Buchanan	Alex G. Buchanan & Son	9,439.30
W. Davidson	Mutual Live Stock Commission Co.	9,058.59
L. Jones	Mutual Live Stock Commission Co.	9,058.58
A. E. Rogers	Omaha Live Stock Commission Co.	8,773.79
C. F. Cox	Inter-State Live Stock Commission Co.	8,351.07
R. Reynolds	Inter-State Live Stock Commission Co.	8,351.07
H. H. Roberts	Roberts Bros. & Rose	8,187.44
Joe McClenaghan	Record Live Stock Commission Co.	7,562.75
R. M. Laverty	Laverty Bros.	7,414.70
E. A. Rose	Roberts Bros. & Rose	7,287.44
C. L. Peterson	Great Western Commission Co.	7,161.73
J. A. Alsworth	Great Western Commission Co.	7,161.73
A. W. Tagg	Tagg Bros. & Moorhead	6,971.42
W. C. Lyman	Tagg Bros. & Moorhead	6,971.42
Cliff McClenaghan	Record Live Stock Commission Co.	6,962.76
W. F. Denny	W. F. Denny & Co.	6,848.89
John Smith	Wm. R. Smith & Co.	6,847.09
W. B. Tagg	Tagg Bros. & Moorhead	6,645.86

Owner	Firm	Income per owner
A. E. Anderson	Tagg Bros. & Moorhead	$6,371.42
M. C. Wilkerson	Tagg Bros. & Moorhead	6,371.42
T. J. Donahue	Donahue Bros., Inc.	5,957.18
C. W. Allyn	Lindley-Cahow Commission Co.	5,321.31
N. R. Bryson	Bryson Bros.	5,235.86
Chas. Burke	Burke-Rickly Co.	5,067.20
James J. Donahue	Inter-State Live Stock Commission Co.	4,983.68
Lou Bick	Lou Bick Commission Co.	4,889.27
A. J. Adams	Lou Bick Commission Co.	4,889.27
H. W. Johnson	Tagg Bros. & Moorhead	4,871.42
Allen H. Dudley	Allen Dudley & Co.	4,715.57
L. J. Hough	Omaha Live Stock Commission Co.	4,564.17
T. J. Bryson	Bryson Bros.	4,490.57
Geo. E. Martin	Martin Bros. & Co.	4,383.25
M. F. Guilfoyle	Corn Belt Commission Co.	4,326.64
Clyde Kells	Fonda-Kells & Christie Co.	4,321.99
A. J. Randall	Randall & Co.	4,135.71
Chester P. Dudley	Allen Dudley & Co.	4,114.57
E. C. Johnson	Wood Bros.	4,066.07
Webster Mills	Burke-Rickly Co.	3,800.39
E. H. Burke	Burke-Rickly Co.	3,800.39
E. W. Boetel	Boetel Live Stock Commission Co.	3,749.86
G. W. Greene	Greene-Madden & Co.	3,740.85
W. Madden	Greene-Madden & Co.	3,740.85
B. F. Roth	Wood Bros.	3,632.15
J. Boetel	Great Western Commission Co.	3,585.04
H. W. Moberly	Lee Live Stock Commission Co.	3,506.27
Geo. E. Parker	Triangle Live Stock Commission Co.	3,483.35
C. J. Horn	Triangle Live Stock Commission Co.	3,483.35
John O. Willison	Triangle Live Stock Commission Co.	3,483.34
Frank Dworak	Dworak-Stolinski Commission Co.	3,214.24
F. J. Stolinski	Dworak-Stolinski Commission Co.	3,214.23
J. C. Christie	Fonda-Kells & Christie Co.	3,196.99
E. J. Wright	Tagg Bros. & Moorhead	3,161.45
John Fitz Roberts	Roberts Bros. & Rose	3,087.45
Will H. Woods	Wood-Oswald Co.	3,076.74
James Martin	Martin Bros. & Co.	3,014.54
John Martin	Martin Bros. & Co.	3,014.53
E. J. Clifton	Clifton Commission Co.	2,913.37

Owner	Firm	Income per owner
Chas. Hammer	Donahue Bros., Inc.	$2,872.04
H. A. Hough	Omaha Live Stock Commission Co.	2,771.39
E. Munson	Wood Bros.	2,764.29
Frank E. Bliss	Bliss & Son	2,751.28
J. C. Cunningham	Security Live Stock Commission Co.	2,731.61
Wm. H. McAdams	McAdams Bros. & Ihnen	2,655.58
Robert Ihnen	McAdams Bros. & Ihnen	2,655.57
R. H. Fonda, Jr.	Fonda-Kells & Christie Co.	2,643.98
Claude Clifton	Clifton Commission Co.	2,613.36
M. S. Morrill	Great Western Commission Co.	2,585.08
F. C. Bliss	Bliss, Wellman & Hopkins	2,537.77
F. A. Wellman	Bliss, Wellman & Hopkins	2,537.77
E. H. Hopkins	Bliss, Wellman & Hopkins	2,537.76
Mr. Gant	Gant Live Stock Commission Co.	2,514.47
J. R. McPhail	Inter-State Live Stock Commission Co.	2,500.00
Robt. A. Gross	Randall & Co.	2,273.03
Byron Clow	Byron Clow Co.	2,259.02
Mat Malone	Snyder-Malone-Coffman Co.	2,070.05
John J. Robb	Randall & Co.	2,067.85
F. W. Farris	Farris-Marcy Co.	2,011.78
Oscar Allen	Synder-Malone-Coffman Co.	1,890.02
W. W. Rapp	Lee Live Stock Commission Co.	1,881.59
T. B. McEntee	Randall & Co.	1,862.68
J. N. Laird, Sr.	Laird Live Stock Commission Co.	1,792.18
F. M. Young	Byron-Clow Co.	1,753.00
Eugene P. Melady	Melady Bros.	1,637.94
G. J. Ingwerson	Ingwerson-Daugherty	1,621.20
R. B. Daugherty	Ingwerson-Daugherty	1,596.20
J. N. Williams	Williams & Son	1,558.76
L. E. Williams	Williams & Son	1,558.76
Leo Ryan	Donahue Bros., Inc.	1,511.89
P. H. Winn	Winn Bros.	1,501.29
J. P. Winn	Winn Bros.	1,501.29
Henry Dolezal	Globe Live Stock Commission Co.	1,372.99
Frank G. Roberts	Geo. M. Woods Sheep Commission Co.	1,303.14
H. J. Oswald	Wood-Oswald Co.	1,076.74
Samuel Coffman	Central Live Stock Commission Co.	1,052.15
B. Ward	Ward-Murphy Live Stock Com. Co.	1,018.40
M. J. Murphy	Ward-Murphy Live Stock Com. Co.	1,018.40

Owner	Firm	Income per owner
John Ralston	John Ralston Commission Co.	$609.75
S. R. Cox	Cox-Jones Commission Co.	600.00
W. J. Dearth	Geo. M. Woods Sheep Commission Co.	525.24
Brad Hickox	Martin Bros. & Co.	497.45
A. D. Majors	Martin Bros. & Co.	397.45
M. S. Burmeister	Martin Bros. & Co.	372.65
R. M. Burnes	Martin Bros. & Co.	314.70
H. G. Kiddoo	Byers Bros. & Co.	41.14
M. G. Sherman	Byers Bros. & Co.	24.68
968 Other Shares of Stock	Byers Bros. Co.	1,991.53
Books Sent to Chicago	Chas. O. Robinson & Co.	17,544.96*
5 Partners & 2 Co-partners	John Clay & Co.	6,664.11*
Chas. Wood	Wood Bros.	5,641.04*
A. Wertheimer	Rosenbaum Bros. & Co.	5,164.52*
E. H. Ingwersen	Rosenbaum Bros. & Co.	4,766.48*
A. A. Daly	L. E. Roberts & Co.	2,828.55*
Jacob Jacobs	Jacob Jacobs Live Stock Com. Co.	2,839.45*
T. A. Jackson	Jackson Live Stock Commission Co.	2,267.75*
J. H. Ingwersen	Rosenbaum Bros. & Co.	2,015.42*
D. C. Mosier	Rosenbaum Bros. & Co.	1,511.57*
H. K. Wertheimer	Rosenbaum Bros. & Co.	1,007.71*
D. R. Ingwersen	Rosenbaum Bros. & Co.	629.82*
A. B. Moorhead	Tagg Bros. & Moorhead	242.44*
J. R. Eastes	W. R. Smith & Co.	152.91*
A. C. Borroff	Rosenbaum Bros. & Co.	10.08*
C. J. Ingwersen	Rosenbaum Bros. & Co.	5.04*
E. G. Smith	Rosenbaum Bros. & Co.	5.04*
Wm. Frazier	Frazier-Johnson Co.	2.25*

[*Red in copy.]

SUMMARY

No. of owners			Total income
2	From $13,000.00 to	$14,000.00	$26,515.88
1	12,000.00	13,000.00	12,809.15
1	11,000.00	12,000.00	11,932.45
2	10,000.00	11,000.00	21,173.49
3	9,000.00	10,000.00	27,556.47
4	8,000.00	9,000.00	33,663.37
5	7,000.00	8,000.00	36,588.35
8	6,000.00	7,000.00	53,990.28
4	5,000.00	6,000.00	21,581.55
13	4,000.00	5,000.00	58,753.18
19	3,000.00	4,000.00	64,986.01
21	2,000.00	3,000.00	53,267.05
19	1,000.00	2,000.00	28,508.62
9	Less than $1,000.00		3,383.06
	968 Shares of Stock, Byers Bros & Co.		1,991.53
	5 Partners, 2 Co-Partners, John Clay & Co.		6,664.11*
	Chas. O. Robinson & Co., books sent to Chicago		17,544.96*
16	Loss		29,090.07*
	Total Number of Owners—127.		
18	Owners with an Average Income of		$9,457.73
44	Owners with an Average Income of		4,529.80
49	Owners with an Average Income of		1,737.93
16	Owners with an Average Loss of		1,818.13*

[*Red in copy.]

6. The order should be enjoined because confiscatory.

By all of the uncontradicted evidence of record, by what is in substance a finding by the Court below, by what is in substance an admission in the answers of the appellees, by the complete silence of the Secretary's findings upon the point, and by actual driving of one-fifth of the appellants out of business since the rates took effect—in all of these conclusive ways the record establishes not merely the non-compensatory, not merely the confiscatory, but the absolutely ruinous effect of these rates as to every market agency doing business at the Kansas City stockyards. This appears whether the question be regarded from the standpoint of the aggregate return to all the companies, of the aggregate return to the companies with the most volume in head or in dollars, of the aggregate return to those companies which have been longest in the business or to those which are most efficient judged by the matter of returns to customers, or whether regarded from the standpoint of each and every appellant individually.

Upon settled principles a rate order having such an effect is clearly confiscatory and void and should be enjoined.

Board of Public Utility Commissioners v. *New York Telephone Co.*, 271 U. S. 23, 31;
Smyth v. *Ames*, 169 U. S. 466. 547;
McCardle v. *Indianapolis Water Co.*, 272 U. S. 400, 408-409.

7. Order not based on any evidence of waste or inefficiency in the conduct of the businesses upon a competitive basis.

The Secretary finds (finding 129, R. 90) that "There are more firms and a larger personnel on the Kansas City

market than are necessary to dispose of the shippers' livestock effectively. A smaller number of firms than are now engaged could handle the business more economically." Again, (FF. 130, R. 90) "Moreover, the unit costs of many of the firms are high because the volume of business coming to the market is divided among too many firms and handled by an unnecessarily large personnel."

These generalizations can in no sense be regarded as findings that all of the appellants or that any particular appellants are conducting their businesses wastefully or inefficiently in a competitive system. Certainly, they cannot justify a rate order which, to take one example out of a number that could be cited, would turn a profit into a $8,668 per annum loss in the case of one of the oldest companies in the business (John Clay & Company) which handles the largest volume at the Kansas City market, equal to almost 10% of the total volume of all of the companies.[1]

It is unnecessary to multiply examples. It is patent that there is in these findings no definite finding of inefficiency in a competitive system as to the appellants generally or as to any of them. If these findings should be regarded as having that meaning, then they would be wholly unsupported by any evidence. What the quoted findings mean is patent, *i.e.*, that the Secretary regards the competitive system itself as uneconomic and wasteful. Such a finding, of course, is *ultra vires* the Secretary under the statute, as will be discussed in a subsequent subhead.

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[1]The gross value of the sales and purchases of John Clay and Company for all species in 1931 amounted to $12,267,430.93, which is 9.87% of the $125,362,223.97 total value of sales and purchases of all agencies other than two cooperatives and one small firm for which these figures were not available (Res. Ex. 243, R. Vol. III, p. 42).

Searching the findings from end to end, the only finding that could be regarded as asserting that, as competitive businesses, the appellant firms were being operated inefficiently and wastefully is finding 113 which amounts to nothing more than a vague statement that the "general impression gained from the record" is that the appellants attempted to maintain salaries and personnel in the face of the depression.[2]

This finding is so vague and indefinite as to be wholly without weight. Moreover, if regarded as a finding that the rates of the appellants should be cut because they were unreasonably high by reason of the fact that they were attempting to maintain pre-depression salaries and personnel, then it is wholly unsupported by any evidence. The record is replete with uncontradicted evidence that appel-

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[2]"113. Notwithstanding the unfavorable business conditions and lowered receipts in 1931, as compared with 1929, few of respondent firms operating in both of those years showed any substantial reduction of personnel in the former as compared with the latter. Also, few firms made any substantial reduction in salaries and wages sufficiently early in the year 1931 materially to affect their cost of doing business as shown in the audits covering that year. Such decreases as were made took place largely in the latter part of the year 1931 and in the year 1932. The general impression gained from the record is, however, that respondents, in the face of almost universal lower levels in the United States, are attempting to maintain their personnel and the salaries thereof at the levels obtaining in the more prosperous year, 1929. This necessarily has a depressing effect upon the net moneys available to the owners of these businesses which may be designated 'net owner incomes' " (R. 83).

It is alleged in the petition that total costs for compensation to workers were less in 1931 than in 1929 by $403,208.38, or approximately 22%; and that total selling and buying salaries were less by $231,703.51, or approximately 30% (R. 6). Despite this, as found by the Secretary (FF. 139, R. 95), the petitioner firms were required to employ more salesmen for each species in 1931 than in 1929. This necessity is attributable to changes in the character and mode of receipts, R. 706-708, 709, 721, 727-728, 734, 744-745, 758, 763, 794, 1061; and to changes in the methods of buyers and the nature of purchase units, R. 744, 776, 789-790, 840-842, 922, 1084.

lants cut salaries and reduced personnel to the fullest extent that was practicable under the circumstances.[3] Moreover, the rate which the Secretary has found to be unreasonable is not a pre-depression rate at all, but a rate established by these appellants in May, 1932, which lowered charges in line with the abnormally low prices of livestock then obtaining at the height of the depression.[4]

Finding 113 is a mere impressionistic make-weight. There is no ground for the conclusion that the Secretary intended to base his order upon this passing and erroneous statement, though if the order is to be deemed to be based upon finding 113, then it is clearly void for want of any evidence whatever to sustain it.

8. The ruinous and confiscatory effect of the rates as to each and all appellants requires that the order be enjoined without reference to the propriety of the allowances for particular components of the rate.

Turning from the bases of the order back to its effect, that effect requires that the order be enjoined, wholly irrespective of the theoretic validity of the economic principles upon which the Secretary may have determined any particular item in the balance sheet from which he prepared these rates. It is very clear that the statute gives him no authority to make a rate that will drive each and every market agency out of business and will permit only those who can do business on his theoretical rates to engage in the business. Examination of the particular items in the rate is, therefore, wholly unnecessary. Even if this Court

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[3]R. 711, 719, 723, 728, 729, 730, 737, 749, 758, 772, 773, 918, 922, 929, 963, 965, 1079.

[4]R. 2-3; FF. 6, 7, 8, 175, 179, R. 29-30, 126, 127.

should attempt to perform the duty which the court below has not performed and analyze each and every one of the items composing this rate and the Secretary's findings and the evidence in respect of them, there would be no hope of sustaining the order by balancing an error in respect of one item against an overallowance in respect of another (*cf. Los Angeles Gas Co.* v. *R. R.*, 289 U. S. 287). Here the effect of the rate order as a whole is confiscatory and is not only confiscatory but ruinous. If the Secretary were able to establish, which he is not, that every particular item in his calculation has a justifiable and reasonable basis, he would still have to explain the result. It would then be apposite for the Court to apply to the Secretary the rule which it has upon several recent occasions applied to the converse situation and rule that he had proved too much, and that his proof could not be squared with the actual results.

The recent decisions in which this Court has applied the doctrine of actual results to confound elaborate proof are too familiar to justify extended discussion. See *Lindheimer* v. *Illinois Bell Tel. Co.*, 292 U. S. 151, 163-164; *Dayton Power & Light Co.* v. *Public Utilities Comm.*, 292 U. S. 290, 312. In those cases, however, the rule has been applied to judge the issue of confiscation by the actual effect of the rates on the business of the company and elaborate calculations have not been allowed to overturn it. As this Court said in the *Lindheimer* case:

> "This actual experience of the Company is more convincing than tabulations of estimates. In the face of that experience, we are unable to conclude that the Company has been operating under confiscatory intrastate rates. Yet, as we have said,

> the conclusion that the existing rates have been confiscatory—and grossly confiscatory—would be inescapable if the findings below were accepted. In that event, the Company would not only be entitled to resist reduction through the rates in suit, but to demand, as a constitutional right, a large increase over the rates which have enabled it to operate with outstanding success. Elaborate calculations which are at war with realities are of no avail. The glaring incongruity between the effect of the findings below, as to the amounts of return that must be available in order to avoid confiscation, and the actual results of the Company's business, makes it impossible to accept those findings as a basis of decision."

The rule there applied to defeat elaborate calculations claimed to show confiscation when the actual result of the rate was shown not to be confiscatory must, under any system of equal justice, likewise be applied when government seeks to hide a confiscatory result behind the barrage of elaborate calculation.

9. The inescapably confiscatory effect of the order requires reversal of the decree below with directions to enjoin the order, whatever the theory upon which based and whatever the scope of judicial review thereof.

The statute expressly accords the appellants a judicial review of the order of the Secretary (Sec. 204), a review to which the appellants are entitled as a matter of constitutional right on the issue of confiscation (*Oklahoma Operating Co.* v. *Love,* 252 U. S. 331, 335).

No question can validly be made of the rights of appellants to be protected against confiscation, just as any other public service business whose charges are subject to public

control. The status of these appellants to raise the issue of confiscation and to have a determination upon it is not defeated by the personal service character of their business or by the fact that their pecuniary capital investment is small. This is clear upon principle,[1] was assumed by this Court in the *Tagg* case,[2] and has been assumed by the court below.[3] While pecuniary capital investments of the appellants are small, the record establishes that the majority of them have devoted the major portion of their lives to learning this business, many of them having engaged in it for a quarter to a half century at this very market.[4] To destroy their business, not as the normal result of competition and growth but by governmental command, is certainly to confiscate that which is as vital to the appellants as the physical plant or capital assets of a utility having a fixed physical equipment. As the English court said many years ago:

> "Every man's trade maintains his life, and therefore he ought not to be deprived or dispossessed of it any more than of his life." *Case of Monopolies*, Trin. 44, Eliz., 11 Co. Rep. 84b, (77, Eng. Reprint, 1260).

On the issue of confiscation the order is clearly void *in toto*, from whatever angle approached and whatever view be accepted as to the scope of judicial review:

(a) In Point II *post* it is established, conclusively as we think, that this order as a whole is not based upon any attempt to make a reasonable rate but upon the assumption

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[1] *Truax* v. *Raich*, 239 U. S. 33, 38-39; *International News Service* v. *Associated Press*, 248 U. S. 215, 236-237.

[2] 280 U. S. 420.

[3] R. 151-152.

[4] Res. Ex. 204.

of a power to make an unreasonably low rate which is attempted to be justified on the further assumption of a power to determine who shall enter into this business and how it shall be conducted. But the more or less extended analysis of the order undertaken in the succeeding point is really not essential to the establishment of this conclusion. It follows as a necessary and inescapable conclusion from what has already been said in this present point, that a rate fixed at a level which is confiscatory as to everybody is not a result which is contemplated by the statute and hence the order must be based upon an erroneous view of the Secretary's powers. When this Court finds that an order of an administrative body is based upon an assumption of power not granted to it, its practice is not merely to reverse the court below but to remand with directions to the lower court to enjoin the order and grant the relief prayed in the bill (*Southern Pacific Co.* v. *Interstate Commerce Commission*, 219 U. S. 433, 452).

(b) The same decree would be required if the case be regarded from the standpoint of the confiscatory effect and result of the challenged rates, without reference to the theory of law upon which they purport to be based. Confiscation is determinable as a matter of fact (*Lindheimer* v. *Illinois-Bell Telephone Co.*, 292 U. S. 151, 169), and "In determining what is a confiscatory regulation of rates, it is necessary to consider the actual effect of the rates imposed in the light of the utility's situation, its requirements and opportunities" (*Smith* v. *Illinois-Bell Telephone Co.*, 282 U. S. 133, 160). That inquiry as respects the appellants to this cause has been made in the preceding pages, and it discloses beyond question that the rate order is confiscatory as to each and every appellant. There is no find-

ing either by the Secretary or by the court below that the rate is or will be compensatory as to anyone, and, if there were any such finding, it would not only be opposed to the weight of the evidence, not only be lacking in a scintilla of evidence to support it, but would be lacking support of any evidence whatever.

In the light of the uncontroverted showing as to the result of these rates, the order is wholly void and the decree below erroneous whatever view is taken as to the scope of the judicial review to which, as we have seen, the appellants are constitutionally entitled upon the issue of confiscation. The majority of the court below, as previously pointed out, finally came to the conclusion that, although the order was against the weight of the evidence, they could not disturb it unless it was made without *"any* evidence to support" it. This, of course, is an erroneous rule, because it is well settled that, even in respect of ordinary matters as to which administrative orders are final if supported by substantial evidence, the rule does not permit an order to stand which is supported by a mere scintilla of evidence. *Interstate Commerce Commission* v. *Union Pacific R. R. Co.*, 222 U. S. 541, 547-548. However, there is not even a scintilla of evidence to show that these rates are compensatory, whereas every bit of evidence on the subject in the record establishes that they are confiscatory.

(c) But appellants are entitled to have the court itself weigh the evidence on the issue of confiscation and not merely to determine whether there was any substantial evidence supporting the order. This has been expressly ruled by this Court (*Ohio Valley Water Co.* v. *Ben Avon*

Borough, 253 U. S. 287, 289) and has been the consistent practice.

Knoxville v. *Knoxville Water Co.,* 212 U. S. 1, 8;

Prendergast v. *New York Telephone Company,* 262 U. S. 43, 50;

Bluefield Water Works & Improv. Co. v. *Public Service,* 262 U. S. 679, 683;

Northern P. R. Co. v. *Department of Public Works,* 268 U. S. 39;

Lehigh Valley R. Co. v. *Board of Public Utility Commissioners,* 278 U. S. 24, 36;

United R. & Electric Co. v. *West,* 280 U. S. 234, 251;

Chicago, R. I. & P. R. Co. v. *U. S.,* 284 U. S. 80; and

West v. *Chesapeake & P. Telephone Co.,* 295 U. S. 662.[4]

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[4]The question posed but not decided in *Tagg Bros. & Co.* v. *Moorhead,* 280 U. S. 420, 445, as to whether in cases under the Packers & Stockyards Act the rule adverted to requires a trial *de novo* with the admission of additional evidence when the issue of confiscation is raised, does not throw any doubt upon the settled rule of the cases cited above that, on the issue of confiscation, the court, whether the case is heard upon the administrative record or also upon new evidence introduced before it, has the duty itself of weighing the evidence and of reaching its own conclusions of fact.

The rule requiring that the court shall give an independent judgment upon the facts as well as law has not been limited to issues of confiscation but has been expressly extended to issues of fundamental or jurisdictional fact underlying the validity of the legislative or administrative action (*Crowell* v. *Benson,* 285 U. S. 22, 58), and extended to all claims of constitutional right, for the dual purpose of affording adequate protection to such right through the "difference in security of judicial over administrative action" (*Ng Fung Ho* v. *White,* 259 U. S. 276, 284-285) and of maintaining the appropriate function of the judiciary in the enforcement of basic rights (*Crowell* v. *Benson,* 285 U. S. 22, 46, 60-61). See *Phillips* v. *Commissioner,* 283 U. S. 589, 600; *Tagg Bros. & Moorhead* v. *U. S.,* 280 U. S. 420, 443-444.

It would appear to be unnecessary to weigh the evidence to establish the confiscatory effect of the rate order when all the evidence on that point is one way and establishes the confiscatory nature of the order beyond dispute. If, however, the order be looked at not from the standpoint of its results but from the standpoint of the adequacy of particular components of the rate, it appears that a majority of the court below has already weighed the evidence and found that the Secretary's findings in respect of the most important components of the rate (those relating to salesmanship and business getting expenses) are against the weight of the evidence (R. 166).

If effect is to be given, therefore, either to (a) the obvious improper assumption of power upon which the whole order is based, or (b) to the established and practically confessed confiscation from the standpoint of effect and result of the rates upon all of the appellants collectively and separately, or (c) to the absence of evidence to support the particular findings of the Secretary as to individual components of the rate, we submit that the order is clearly seen to be void and must be enjoined.

In the light of the uncontradicted showing as to confiscation, the only basis upon which the decree below may be explained appears to lie in the court's conclusion that the statute conferred upon the Secretary "almost dictatorial power in the establishment of such rates" (R. 157); and that it at the same time reduced the status of the courts from tribunals empowered to enter judgment according to the law to the impotent position of merely suggesting, as the court below did on two occasions, that additional prayers for relief be addressed to the Secretary who might perchance heed them (R. 157, 166). It is submitted that neither this view of the statute nor this view of the authority of the courts can be given any countenance.

POINT II.

THE ORDER IS ARBITRARY AND BASED UPON A MISCONCEPTION OF THE POWERS AND DUTIES OF THE SECRETARY, UPON A DEPARTURE FROM SETTLED AND RECOGNIZED STANDARDS, BOTH OF REASONABLENESS AND OF ADMINISTRATIVE AUTHORITY, AND UPON AN INTERPRETATION OF THE POWERS OF THE SECRETARY WHICH, IF CORRECT, WOULD GIVE RISE TO A SERIOUS CONSTITUTIONAL QUESTION AS TO ITS VALIDITY, WHICH SHOULD BE AVOIDED.

The constitutionality of the rate making provisions of the Act is no longer, if it ever was, open to dispute. *Tagg Bros. & Moorehead* v. *United States,* 280 U. S. 420. The order is nevertheless void if based upon a misconception of the powers and duties of the Secretary or upon a departure from recognized standards contemplated by the Act to be pursued, or if without legal support in the evidence.

That the findings and order are without legal support in the evidence will, we think, plainly appear from subsequent subdivisions of this brief, but without a meticulous examination of the findings and order in the light of the evidence itself, we think it plain that it is based upon a misconception of the powers and duties conferred upon the Secretary and rests upon the application of standards other than those contemplated by the Act, and at variance with settled and recognized standards, both of reasonableness and of the limits of administrative authority. Moreover, if the Act is to be interpreted as conferring upon the Secretary such unlimited authority as that which has been

exercised and on authority to be exercised for the purposes for which, as appears upon the face of the order, it was exercised, it has, we think, been interpreted in a manner which either renders it unconstitutional or which gives rise to a serious constitutional question, which should be avoided in its interpretation, if possible.

The order is predicated upon the determination by the Secretary of the so-called reasonable cost of conducting the business. The aggregate so-called reasonable costs, as so determined, are $1,210,604.43.[2]

The actual costs as determined by the Government's own accountant were $1,674,460.56, and as determined by the respondents' accountant in the proceedings before the Secretary, $1,813,709.15.[3]

The order, therefore, is predicated primarily upon the assumption that the business can be conducted for ap-

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[2]Pet. Ex. 7, R. Vol. III, p. 9. Curiously enough, the Secretary makes no finding as to these costs in the aggregate or as to any agency and, having made none, makes no finding as to the relation between so-called reasonable cost and the revenues which would accrue under his rates either in the aggregate or for any agency. Indeed, the Secretary made no application of his rates to the business conducted, although the record before him contained full information as to its volume in respect of each agency, and as to the costs incurred by each, as well as in the aggregate. This alone seems to us to constitute serious omission in the way of essential findings (*Beaumont, S. L. & W. Ry. Co.* v. *United States*, 282 U. S. 74; *Florida* v. *United States*, 282 U. S. 194), unless the Secretary is authorized to pick any rates he chooses out of the air, irrespective of their result. The failure to make such application or findings also emphasizes the purely arbitrary character of the order when considered in the light of the actual results disclosed by the discussion under the preceding point.

[3]Pet. Ex. 7, R. Vol. III, p. 9. These gross figures are derived in respect of the Secretary's so-called reasonable costs by applying the so-called unit expenses as found by him to the number of head handled, and in respect of actual costs, upon the basis of the cost studies presented in the proceedings before the Secretary. They are not open to challenge, were not contradicted in the hearing of the case in the court below, and are, we believe, incontestably correct.

proximately three-fourths of the expenses actually incurred, as determined by the Government's own accountant, and for approximately two-thirds of the expenses actually incurred, as determined by the respondents' accountant. It is this drastic reduction of so-called reasonable cost below actual cost that accounts for the inadequacy of the returns not only to the agencies as a whole but to every agency engaged in the business, as disclosed by the results of the order analyzed under the preceding point. These results, in turn, are due to the fact that the Secretary disregarded actual experience and substituted purely hypothetical standards as distinguished from his order in the *Tagg* case which, as found by the District court in that case (29 F (2d) 750), was predicated upon actual cost.[4] In any event, the rates fixed, as already conclusively established, are wholly insufficient to afford adequate compensation to any of the agencies or their owners, and below the actual cost of performing the service by many, including the largest and most efficient, which, if any, should be expected to show net returns under any rates within the zone of reasonableness. It is upon these facts we rely in our contention that the order is confiscatory, or if not, clearly the result of a purely arbitrary exercise of power; but be these contentions well taken or not, the facts disclosed have an important bearing upon the sufficiency of the rates under

[4]This is particularly true in respect of the all important item of salesmanship and salesmen's cost, which, upon the face of the order, is based upon a purely hypothetical standard as to the number of each species which a salesman should sell, which the uncontradicted evidence before him disclosed had never been attained by any salesman or any agency, even including those having the largest volume of business and which, unless they are employing unnecessary help at expense to themselves, should have had sufficient volume to attain the hypothetical standard set up, if such attainment were possible (Point IV, *post*).

standards of reasonableness and upon the limits of administrative action, well recognized at the time of the passage of the Act.

1. In making the order the Secretary departed from all recognized and established standards of reasonableness in effect at the time of the passage of the Act.

The grant of power is practically in *haec verba* with that contained in the Interstate Commerce Act, viz., to prescribe "what will be the just and reasonable rate or charge or charges to be thereafter observed" (Packers & Stockyards Act, Sec. 310).[1] The House Committee in reporting the bill, as pointed out in the opinion of this Court in the *Tagg* case (280 U. S. 420, 435n) said, referring to this section:

> "* * * the Secretary of Agriculture is given substantially the same jurisdiction over stockyard matters which the Interstate Commerce Commission has over railroads, including the power, after full hearing, to establish and enforce just and reasonable rates and charges for, and practices in connection with, the furnishing of stockyard services."[2]

The two Acts, although applying to different businesses, are in *pari materia,* and the Congress obviously intended to confer upon the Secretary the same powers conferred upon the Interstate Commerce Commission by the Interstate

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[1]Compare Sections 1 and 15 of the Interstate Commerce Act.

[2]As likewise pointed out in the opinion in that case (footnote p. 435):

> "By the definitions contained in §301 (b) and (c), the term 'stockyard services' includes the services rendered by the plaintiffs."

Commerce Act, no more and no less. While the same words may be used in two different acts with different meanings, the obvious purpose of this Act, as demonstrated by the foregoing excerpt from the House Report, as well as by its language, was to confer upon the Secretary the same powers conferred upon the Interstate Commerce Commission, and subject to the same limitations. In so doing the Congress must also be assumed to have been familiar with the standards of reasonableness and of administrative authority under the interpretation theretofore placed upon the Interstate Commerce Act, including its administrative interpretation (*U. S.* v. *Jackson,* 280 U. S. 183, 196, 197; *U. S.* v. *Midwest Oil Co.,* 236 U. S. 459, 481, *United States* v. *Baruch,* 223 U. S. 191, *Northern Pacific R.R. Co.* v. *Musser-Sauntry Land, Logging & Mfg. Co.,* 168 U. S. 604, 608), and to have enacted the statute in the light of such prior interpretation of the Act after which it was patterned (compare *The "Abbotsford",* 98 U. S. 440, 444, *Kepner* v. *United States,* 195 U. S. 100, *United States* v. *G. Falk & Brother,* 204 U. S. 143, 152, *United States* v. *Cerecedo Hermanos y Companie,* 209 U. S. 337, 339, *Brewster* v. *Gage,* 280 U. S. 327, 337, *Manhattan Properties Company* v. *Irving Trust Company,* 291 U. S. 320).

The proceeding before the Secretary involved all of the rates of all of the agencies on all species handled at the yards. The problem with which the Secretary was confronted was, therefore, substantially the same as that which has confronted the Interstate Commerce Commission, from its inception, in the determination of reasonable rates and the prescription of a standard for such determination in a general rate case involving all the carriers in a given group or district, as distinguished from one involving the deter-

mination of particular rates for a particular carrier or carriers. Prior to the enactment of the Transportation Act, the only standard of reasonableness imposed by the Interstate Commerce Act was the simple declaration that the rates should be just and reasonable. Upon numerous occasions, prior to the adoption of the Transportation Act, the Commission had occasion to interpret its powers under the Interstate Commerce Act for the purpose of determining the standard of reasonableness and the limits of its administrative authority in such a general rate case. One of the first cases in which it established a standard of reasonableness for such cases was *Re proposed Advance in Freight Rates,* 9 I. C. C. 382, 425, 426, involving the question of a uniform rate for grain from Chicago to New York, rates which, as the Commission remarked, would govern the charges of all railroads transporting grain between those points, regardless of the difference in their costs. The Commission pointed out that "It might be manifestly unfair to select a single advantageous line and make that the standard" (p. 425), and that "Upon the other hand, it would be equally unfair to the public if the most expensive line were made the standard" (p. 426). After giving examples of the least expensive and the most expensive lines, and disregarding them as no proper standard, the Commission took as its standard for fixing the rate the New York Central and the Pennsylvania, whom it found to be typical carriers in respect of the commodity and territory involved (p. 426).[3]

The principle of this decision was again applied in *Eastern Rate Case,* 20 I. C. C. 243, 274, and in the *Western*

[3]It remarked that the situation would not be changed if it included the Baltimore and Ohio as a typical road also in respect of this traffic.

Rate Case, considered at the same time, 20 I. C. C. 307, 325. Each of these cases involved a proposed uniform advance in substantially all rates in the Eastern and Western Districts respectively.

In the *Eastern Rate Case, supra,* after adverting to prior rulings and similar situations, the Commission said:

> "What is the reasonably fair application of this *rule* to the case before us? The Pennsylvania lines extend from New York, Philadelphia, and Baltimore to Chicago and St. Louis and reach most of the important cities west of Buffalo and Pittsburgh by their own rails. In the year 1909 the earnings of that system were more than one-quarter of the aggregate earnings of all the 41 railroads previously named, which embrace practically all lines in the Official Classification. If reference be had to those lines mainly interested in this traffic the percentage of income would be still larger. This Commission might very well say that it would make the Pennsylvania system the *standard* by which to measure the reasonableness of their rates. On the whole, however, it seems fairer to include with the Pennsylvania the New York Central lines upon the north and the Baltimore & Ohio upon the south. The freight revenues of these three systems would be nearly one-half of the total revenues of all railroads in the territory in question, and they transport this traffic by their own rails between all important places. In 9 I. C. C. Rep., 382, this Commission considered the justice of certain advances in grain rates between Chicago and the Atlantic seaboard and it there held that whatever rate might reasonably be imposed upon these three systems must be held to be a reasonable charge for that service by all lines. We hold to the same view in this investigation. We do not mean that other lines should not be considered,

> but that these systems may be taken as *typical.* Under rates reasonable for these three systems there may be lines whose earnings will be extravagant, but that is their good fortune. There may be lines which can not make sufficient earnings, but that is their misfortune. We ought not to impose upon this territory, for the purpose of allowing these defendants additional revenues, higher rates than are adequate to these three systems considered as a whole." [Emphasis ours.]

The Commission thus adopted as a standard of reasonableness in that case the composite results of operation on the Pennsylvania, New York Central and Baltimore and Ohio as typical lines in the territory.

It pursued the same course in the *Western Rate Case, supra,* in which the Santa Fe and Burlington were selected for the purpose stated, and the reasonableness of the rates measured by their composite performance. The principles of these cases were again restated and applied in *1915 Western Rate Advance Case,* 35 I. C. C. 497, 560-561; see also *City of Spokane* v. *N. P. Ry. Co.,* 15 I. C. C. 376, 393-394, *Kindel* v. *N. Y., N. H. & H. RR. Co.,* 15 I. C. C. 555, 561, *Newport Mining Co.* v. *C. & N. W. Ry. Co.,* 33 I. C. C. 645, 656.

It was thus recognized administrative law, under a statute granting power of the same kind and in the same words, that the reasonableness of the rates charged or to be charged by a number of competing public agencies was not to be measured by the relation between revenue and cost, or the results of operation of all combined, or of the most favorably situated,[4] or of the least favorably

[4]Even under so drastic a standard as this the instant order is void, for under it *no* agency will receive adequate compensation.

situated, but by the composite results of a group of those agencies which might reasonably be taken to be typical and representative of the business. Such was the recognized standard of reasonableness and of the limits of administrative authority under the Interstate Commerce Act, when the Packers & Stockyards Act was passed.

The same principle was apparently applied in the *Tagg Brothers* case, as evidenced by the opinion of the District Court, from which it appears that the so-called reasonable cost determined by the Secretary, upon the basis of which the rates were fixed, coincided with the actually experienced costs of typical and representative firms.[1]

In this case the Secretary has disregarded all experience. He has established rates inadequate to pay the cost either of any group of agencies, including the largest and most efficient, which might be regarded as typical or representative, or of any agency, and in addition, a reasonable compensation to the owners, most of whom would receive little or nothing, and none of whom would receive compensation which, by the wildest stretch of the imagination, could be regarded as extravagant. Had the Secretary given heed to composite cost and the relation thereof to the revenues of any group of agencies under his rates, or of any single typical or representative agency, he could not have entered the order which he made. He therefore departed from the standards of reasonableness and of administrative authority, long recognized and applied at the time of the passage of the Act by the only administrative tribunal then exercising the same powers thereby conferred upon the Secretary. On the contrary, he proceeded upon the assumption that it was within his power to estab-

[1] 29 Fed. (2d) 750, 755.

lish rates so low as to make it impossible for any existing agency to conduct its business either without loss or at adequate compensation for the services of the owners, in the expectation that he would thereby set in motion a survival-of-the-fittest contest, which would ultimately reduce the number of agencies engaged in the business, and in the hope that those fortunate enough to survive might be able, at some indefinite future date, to live under the rates prescribed through the attainment at some time in the future of the purely hypothetical standards of performance upon which his so-called cost determination was based, after their less hardy competitiors had perished. That the order can be sustained only upon the assumption that the Secretary is possessed of power thus to limit the ultimate number engaged in the business by fixing rates so low as to be presently non-remunerative for all, we think plainly appears, as will be hereinafter shown. But whether such was his purpose or not, the rates as fixed are incontrovertibly non-remunerative as to every agency and will result in actual loss to many. This is so because the Secretary, unlike the Interstate Commerce Commission in the cases cited, disregarded all actual experience and prescribed rates wholly at variance therewith. In thus departing from long recognized standards of reasonableness and of the limits of administrative authority, the Secretary departed from the standards of reasonableness contemplated by the Act at the time of its passage. Upon this ground alone the order should be set aside.

Moreover, in this Act, as in the Interstate Commerce Act, the requirement that rates shall be just and reasonable means that they shall be just and reasonable to the public agency involved as well as to those who employ its services.

It was no doubt on this account that the Commission construed the Interstate Commerce Act as requiring it to consider the actual experience of typical and representative carriers rather than that of the most favorably situated, and, on the other hand, to disregard both those most unfavorably situated, or the composite results of all as resulting in injustice to the public. Here the Secretary has wholly disregarded the requirement that the rates be just and reasonable to the agencies as well as to the public and has prescribed rates under which none can live.

2. The order is based upon an erroneous conception of the Secretary's powers and duties and upon an interpretation of the Act which it would seem would render the Act unconstitutional or at least give rise to a serious question as to its constitutionality.

The key to the order is to be found in these words:

> "129. There are more firms and a larger personnel on the Kansas City market than are necessary to dispose of shippers' livestock effectively. A smaller number of firms than are now engaged could handle the business more economically * * *" (FF. 129, R. 90).

That such is the basis of the order is demonstrated by other statements contained therein, such as

> "Moreover, the unit costs of many of the firms are high because the volume of business coming to the market is divided among too many firms and handled by an unnecessarily large personnel * * * " (FF. 130, R. 90).

And:

> "In arriving at a reasonable cost to be covered into rates in the case of those functions, the expenses of which are automatically held down, the costs as actually incurred by each of the firms should be considered and the reasonable cost arrived at, giving due consideration to the circumstances under which each of the respondents operates. In case of those costs which the conditions of the business tend to increase, such as the cost of salesmanship and the cost of advertising, expenses as actually incurred by *any* firm or by all of the firms do not furnish an adequate guide to the reasonableness of such cost * * *" (Emphasis ours) (FF. 131, R. 91).

Consequently, in determining the so-called reasonable cost of the all important items of salesmanship, the Secretary adopts a hypothetical standard unattained by any salesman or any agency; no matter how large the volume of its business, and in the equally important item of business-getting and maintaining expense (loosely referred to in the foregoing quotation as advertising but really, as appears from the statement, expense incurred largely, if not primarily, for the purpose of maintaining such contacts with shippers through correspondence or personal visit as will enable the salesmen to produce the best possible price for the growers' cattle) his order is based on an arbitrary allowance of 10% of all other so-called reasonable cost, unsupported by the actual cost experience of any agency.[1]

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[1]The adoption of the hypothetical standard of salesmanship and the determination of cost of salesmanship on the basis of such standard is in effect equivalent to a finding that, whereas there were 188

The declaration that there are too many agencies and too large a personnel is immediately followed by the disclaimer of authority to limit the number of such agencies or employees, the Secretary saying:

> "The Packers and Stockyards Act does not clothe the Secretary of Agriculture with authority to determine how many firms would be required to handle the business properly or what specific firms should be engaged in business or whether some firms are unwisely continuing in business * * *" (FF. 129, R. 90).

Nor does the Act confer upon him any such power. The rates prescribed were clearly made as low as they were for the purpose of limiting the number which might successfully engage in the business. If the Secretary, pursuing the standard followed by the Interstate Commerce Commission, had based the rates upon the actual cost and performance of typical representative agencies, receiving "enough livestock to enable it to handle its business in a reasonably efficient and economic manner" at rates "high enough to produce sufficient gross revenues to pay reasonable costs and

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full time cattle salesmen, 50 hog salesmen and 15 sheep salesmen in 1931 (Pet. Ex. 9, R. Vol. III, p. 11), 79 cattle salesmen, 12 hog salesmen and 8 sheep salesmen were all that were necessary. (These figures are obtained by dividing the total number of each species by the hypothetical performance per salesman.) This despite the existence of many firms having a sufficiently large volume of cattle to have reached the hypothetical standard, if actually attainable. The attempt to explain this reduction away on the theory (R. 91) that "while, for example, one salesman may be able to sell 30,000 head of cattle received by one firm, if the same volume be divided between two firms, two salesmen will be required," will not wash. This is so, because there is no agency at the yards handling 30,000 head of cattle or more, which sells them through the employment of a single salesman. On the contrary, despite volume, even the largest firms handling the largest volume of business, which, under the hypothetical standards, should have been disposed of through not more than four salesmen, have actually employed not less than six (See Point IV, *post*).

a reasonable compensation" and "under ordinary conditions as they prevail on the Kansas City market" (FF. 114, R. 83), which the Secretary in the Finding from which this quotation is taken declared to be the guide adopted, no one could complain, so long as the agencies so chosen as representative could be fairly said to be so within the exercise of the Secretary's administrative discretion. This, however, is not what the Secretary has done. On the contrary, he has fixed the rate so low that no agency will receive adequate compensation therefrom and that many, including those having the largest volume and therefore fully meeting the test laid down by the Secretary, will fail to pay the actual out-of-pocket cost of conducting their business.

The necessary result and, without question, the intended effect of the order, is to make the rates so low that no agency, however great its volume, can live thereunder. By so doing, the Secretary obviously intended to set in motion a survival of the fittest contest among the agencies now engaged in the business by compelling all to operate at ruinously low rates in the hope and expectation that many will be driven out of business, and after this has taken place, that the survivors, if any, *may* be able to pay expenses and make some return at the rates prescribed on the increased volume of business which it is assumed they will then have.[2]

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[2]The Secretary does not say to what number the agencies, which may properly engage in the business, should be reduced through this process of elimination. There is no finding, either as to the number in contemplation, the volume of business which each would be required to do, or the probable effect upon their net revenues if done. The absence of such findings doubtless is due to the consciousness on the part of the Secretary that if made, they would be wholly speculative and conjectural. But so are both the hypotheses upon which the rates are fixed and the probable results to any agency. The only thing that is certain and indisputable on the record is that there is no agency today in business, no matter how large its volume or how efficiently operated, that can make money at the rates prescribed.

It is as though the Interstate Commerce Commission, believing as many do that there are too many railroads or at least too much duplicate or unnecessary mileage in the United States to admit of ideal operation in the most effective and economic manner, should reduce all the rates on all the railroads so that none could pay expenses in the hope that, through the elimination of marginal roads and unnecessary mileage, or through consolidations of roads, terminals or services, or the pooling of traffic, or by all of these means combined, the number, mileage and services remaining would be sufficiently reduced to permit the survivors to pay expenses and earn a fair return upon their investment. If under the power to establish just and reasonable rates, such power may be exercised by an administrative officer or tribunal, provisions for consolidation of railroads or of terminals, or for the enforced coordination of activities, etc., concerning which the Congress has hitherto proceeded upon the assumption that legislation was required, are quite unnecessary.[1] The Commission could do

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[1]Compare *Interstate Commerce Commission* v. *United States ex rel. City of Los Angeles*, 280 U. S. 52, 68-69, where it was claimed that the Commission under its statutory authority to provide for "reasonable, proper and equal facilities" had power to compel the interstate carriers to build a joint union passenger station at Los Angeles. The trial court, quite like the concurring judge in the court below in this case, sustained the asserted power upon the view that the statute vested the Commission "with almost unlimited power in the matter of establishing terminals and union stations". In reversing that decision, this Court said:

> "Without more specific and express legislative direction than is found in the act, we cannot reasonably ascribe to Congress a purpose to compel the interstate carriers here to build a union passenger station in a city of the size and extent and the great business requirements of Los Angeles. The Commission was created by Congress. If it was to be clothed with the power to require railroads to abandon their existing stations and terminal tracks in a city and to combine for the purpose of establishing in lieu thereof a new union station, at a new site, that power we should expect to find in congressional legislation."

the job by the simple device of forcing the complete reconstruction of the industry along such economic lines as the Commission deemed most advantageous by reducing the rates to such a level that none could exist. Congress conferred no such power upon the Commission. Nor has it conferred any such power upon the Secretary. The fact that railroads represent a fixed investment is immaterial. This Court has expressly ruled that the right to earn a livelihood through personal services, that is, the right to acquire property, is as much entitled to protection from arbitrary power as are rights in physical property already acquired. *Truax* v. *Raich*, 239 U. S. 33, 38-39; *International News Service* v. *Associated Press*, 248 U. S. 215, 236. Only upon the suggesti[illegible]ained in the concurring opinion of Judge Van Valkenburgh in the court below that the Secretary is possessed of "almost dictatorial power" can the power sought to be exercised here be sustained.

The question is not one of mere interference with the conduct of the business as a function of management. The order proceeds definitely upon the conception that the Secretary may limit and regulate the number engaged in the business by making the rates for all so unremunerative as to drive out some indeterminate number, leaving the rest to survive if they can.

The issue is broader than that involved in the scope of these proceedings. As pointed out by the Court in its recent decision in *Jones* v. *Securities & Exchange Commission*,[2] "administrative bureaus and commissions" are being "necessarily * * * called into existence by the increasing complexities of our modern business and political

[2]Decided April 6, 1936, p. 12.

affairs." The permissible limits of administrative control of a business have never been defined, but within such limits control may be expected to increase. (*Cf. Nebbia* v. *New York,* 291 U. S. 502.) If, under the guise of regulating rates or prices, an administrative officer or tribunal may be permitted to remake the economic structure of an industry subject to regulation by reducing the rates for all engaged therein to such a level that none can live under them, in the hope that out of the general disaster that follows enough may hold on so that at some future date those, if any, who, at the expense of heavy cost to themselves have clung to the business in which previously engaged, may be able to meet such administrative officers' presently hypothetical standards, then the right of countless numbers of our citizens to make a living is dependent solely upon administrative fiat. The courts have never recognized such a thing as group confiscation. In the last analysis, however, the asserted exercise of such power involves just that, for in the intervening period of general and inevitable disaster to all, those, who ultimately survive, survive only as the result of irretrievable losses imposed upon them by public authority. Under such a conception of governmental power, the state of our economic society and the exercise of personal liberty is not substantially different from that prevailing in Russia, Germany and Italy.

The question, as in all such cases, is one of power, not of the wisdom or expediency of its exercise. The field of businesses subject to public regulation is growing. Considered from the standpoint of the public interest at large, there is no occupation that touches the public so directly as the conduct of retail stores. It is inconceivable that, even if the regulation of such business is permissible, either the

legislature itself or an administrative officer or tribunal, believing that there were too many stores in the aggregate, could reduce the prices for all to a level under which none could survive, for the purpose of reducing their number ultimately to some indeterminate number which might conceivably, at some time in the future, be able to conduct their business at moderate profit in conformity with purely hypothetical standards of efficiency and cost set up by the regulatory authority. Yet that is precisely what the Secretary has undertaken to do in this case. If administrative authority may proceed thus far, then, as stated in *Jones* v. *Securities Exchange & Commission:*

> "The mere will of an official or an official body is permitted to take the place of allowable official discretion"

and "the government ceases to be one of laws and becomes an autocracy".

We do not assert that rates must be made so as either to meet the actual costs of each and every agency or the average costs of all. We do assert that they may not be made, and certainly not under the facts of this case, so as to fail to pay the actual expenses of the most efficient, or leave but a bare margin thereover, and again, we repeat, the Secretary did not find that any of these firms were inefficiently operated, unless their failure to attain his hypothetical standards and to conduct their business upon the basis of his hypothetical costs constitutes inefficiency.

If Congress should directly confer upon any administrative tribunal the power to reduce all rates to a level so low that none could live thereunder, for the purpose of thereby limiting those who would thereafter engage therein, we think it is plain that such an act would be con-

trary to fundamental law. If not, it would in any event give rise to a serious question as to its constitutionality. The Secretary has in effect so interpreted this act. Such interpretation not only finds no support in judicial literature or administrative practice and standards, but should be rejected in order to avoid the serious constitutional question arising on such interpetation.[2]

Assuming power in the Congress to empower an administrative officer or tribunal to limit the number of persons who may engage in a business, subject to public regulation, below the number already engaged therein by requiring certificates of public convenience and necessity, or through other appropriate means, this is not such a statute. Nor would an act, seeking to accomplish this result indirectly, by empowering such administrative agency to reduce the rates of *all* persons then engaged therein to an unremunerative basis for the purpose of reducing such number, through the process of attrition, be either a reasonable or legitimate means to the accomplishment of such limitation in number.[3] While such a direct limitation might deprive some persons then engaged in the business from

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[2]*Panama R. Co.* v. *Johnson,* 264 U. S. 375, 390; *Missouri Pacific R. Co.* v. *Boone,* 270 U. S. 466, 471, 472; *Richmond Screw Anchor Co.* v. *United States,* 275 U. S. 331, 346; *Blodgett* v. *Holden,* 275 U. S. 142, 148; *Lucas* v. *Alexander,* 279 U. S. 573, 577; *Crowell* v. *Benson,* 285 U. S. 22, 62.

[3]Thus, assuming the power to exclude the inefficient, the promulgation of a rate confiscatory as to all, efficient or inefficient, would have no reasonable relation to the accomplishment of that power. This Court has ruled in analogous situations that price fixing statutes which spread a net for the feet of all, innocent as well as guilty, cannot be regarded as having reasonable relation either to the prevention of fraud and collusion (*Tyson* v. *Banton,* 273 U. S. 418, 442, 443) or the prevention of attempted destruction of competition and erection of monopoly (*Fairmont Creamery* v. *Minnesota,* 274 U. S. 1, 10).

further participation therein, it would require the administrative agency to establish rates for the remainder on a remunerative basis. An act or administrative order, whose purpose is to accomplish the same result by indirection through reducing the rates of all to an unremunerative basis, on the other hand, requires all to sustain losses during the indeterminate period necessary for the accomplishment of such purpose. For the reasons stated it seems to us that such a statute or such an order clearly violates fundamental law.

However this may be, Congress conferred no such power upon the Secretary. On the contrary, as disclosed by its legislative history and by the prior decisions of this Court, the purpose of the act was to permit and encourage engagement in the business of all comers without limitation, and it has been so construed by the Secretary. As appears from the decision of this Court in *Stafford* v. *Wallace*, 258 U. S. 495, the primary purpose of the Packers and Stockyards Act, so far as stockyards services were concerned, was to free the grower from the monopolistic control or manipulation of the markets, believed or found by Congress to rest in the packers, through control or intimidation of market agencies.[1] Its purpose was to create a free and open market in which competition should have full play. The Secretary has so construed the Act even to the extent of granting a permit to an agency which had been expelled from the Exchange for a shortage in his accounts.[2] The basic theory behind the order is that the competition intended to be promoted by the Act has reached excessive pro-

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[1]Further statements as to the purpose of the Act are contained in *United Leather Workers* v. *Herkert*, 265 U. S. 457, 469, and *Atlantic Coast Line R. R.* v. *Standard Oil Co.*, 275 U. S. 257, 272.

[2]R. 229.

portions and that consequently the Secretary should correct this situation by the imposition of rates which will drive some of the existing agencies out of business. But, if the number to be permitted to engage therein is to be limited, contrary to the original Congressional purpose, it is for the Congress and not the Secretary to reverse its own policy by suitable legislation.

The Secretary has therefore given to the Act an interpretation, not only inconsistent with recognized standards of reasonableness, giving rise to serious doubts as to its constitutionality, as so interpreted, but contrary to the very purposes and objects of the Act as declared by Congress and as previously interpreted by this Court. That he has done so appears upon the face of the order itself from which it affirmatively appears that the purpose is not to establish rates predicated upon actual costs of any agency, even the most efficient, but to prescribe rates so low as to be unremunerative as to all and thus by a process of attrition limit the survivors, if any, to that indeterminate number which, in the Secretary's superior wisdom, should be permitted to engage in the business.

The order is void upon the quadruple grounds of confiscation, arbitrariness, departure from recognized standards, and the assumption of power not granted.

POINT III

THE FINDINGS AND ORDER CONTAIN NO LEGALLY SUFFICIENT FINDING THAT THE EXISTING RATES ARE UNREASONABLY HIGH.

The making of such a finding is jurisdictional to a reduction in the rates for the future.[1] An ultimate finding to this effect, expressed in the language of the statute, is not sufficient.[2] It must be supported by adequate evidentiary findings.[3]

The Secretary did not find that, under the existing rates, the compensation accruing to the owners of the agencies as a whole or to *any* of them was excessive. Such a finding, if made, would have been unsupported by and contrary to the evidence.

He did not find that the rates charged exceeded the value of the service to the grower. On the contrary the uncontradicted evidence showed that the selling rates were but an infinitesimal proportion of the value of the livestock sold, and materially less, in proportion to value, than the corre-

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[1]See *Interstate Commerce Commission* v. *Louisville & Nashville R.*, 227 U. S. 88, 92; *Interstate Commerce Commission* v. *Stickney*, 215 U. S. 98, 105; *Interstate Commerce Commission* v. *Northern Pacific Railway*, 216 U. S. 538, 544; *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U. S. 74, 82. The provisions of present Act (§§ 306, 310) are modeled after the provisions of the Interstate Commerce Act involved in the above cases.

[2]*Florida* v. *U. S.*, 282 U. S. 194, 213; *U. S.* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 506.

[3]*Florida* v. *U. S.*, 282 U. S. 194, 208, 212, 213, 215; *U. S.* v. *Chicago, M., St. P. & P. R. Co.*, 294 U. S. 499, 506. See *Illinois Central R. Co.* v. *State Public Utilities Comm.*, 247 U. S. 493, 507, 508; *Railroad Comm. of Wisconsin* v. *Chicago, B. & Q. R. Co.*, 257 U. S. 563, 579, 580; *New York* v. *United States*, 257 U. S. 591, 600; *cf. Schechter Corp.* v. *U. S.*, 295 U. S. 495, 539, 540.

sponding charges at other public markets for the sale of other agricultural products and less than similar charges for the sale of livestock in large droves on the farm or ranch.[1]

He set up, as the "guide" to be followed, the rule that "under ordinary conditions as they prevail on the Kansas City market" the rates should be high enough to afford "reasonable compensation" to the "owner or owners of any firm which receives enough livestock to enable it [to] handle its business in a reasonably efficient and economic manner".[2] But he did not find that as to any such firm the existing rates afforded excessive compensation; or that "under ordinary conditions as they prevail on the Kansas City market" the compensation accruing to the owners of any firm was excessive; or that there was *any* firm at the Kansas City market having a sufficient volume to meet his test. Any such finding or findings, if made, would have been unsupported by any evidence and contrary to the evidence. In fact he disregarded such "ordinary" and "prevailing" conditions and based all his conclusions on the assumption of conditions wholly non-existent.

He did not find the existence of any monopolistic practice or of any practices affecting the free flow of interstate commerce (*cf. Stafford* v. *Wallace,* 258 U. S. 495, and *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420). On the contrary the record shows that the market is free from all such practices.

He affirmatively found that salesmen are bargainers, not auctioneers; that the rates are on a unit or headage basis (from which it follows that the compensation accruing to the agency is the same, whatever the price) and that

[1]Statement, pp. 28-29, *ante.*
[2]FF. 114, R. 83.

the price received per head varies materially on the same day on the same grade of cattle; and, either directly or inferentially, that the services performed for the purpose of getting the best obtainable price (whether by way of careful bargaining, country contacts and appraisals or by other means, all of which were reflected in the actual cost incurred), as the business is conducted "under the ordinary conditions as they prevail on the Kansas City Market," are of direct benefit to the grower in the attainment of such price.[3] He did not find that under such "ordinary" and "prevailing" conditions they could be performed by any agency at less cost, or that, under the hypothetical conditions assumed by him, the grower, for whom these services are performed, would fare as well.

The finding that the existing rates are unreasonably high was thus unsupported by either evidentiary findings or evidence and was contrary to both.

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[3]pp. 21-23, *ante;* FF. 65, 84, 51, 89, 93, 94, R. 55, 64-68, 49-50, 73-74, 75, 76.

POINT IV.

THE SECRETARY'S ALLOWANCE FOR SALESMEN'S SERVICES IS BASED WHOLLY ON SPECULATION AND HYPOTHESIS, IS ARBITRARY AND CAPRICIOUS, UNSUPPORTED BY EVIDENCE, AND BASED UPON AN ERRONEOUS CONCEPTION OF THE LAW AND OF THE SECRETARY'S POWERS.

The Secretary's allowances or findings of so-called reasonable cost.

The Secretary's so-called reasonable cost is a composite of so-called reasonable functional costs. Of these the most important is the cost of salesmanship and buying.[1] The Secretary's allowance for this item of cost is in respect of each of the three species based upon a purely hypothetical standard of salesmanship performance, to wit, that a cattle salesman should sell 29,000 head of cattle a year, a hog salesman 85,000 head, and a sheep salesman 250,000 head. The Secretary further finds that the reasonable value of the services of a cattle salesman is $4,000 per annum, of a hog salesman $3,000 per annum, and of a sheep salesman $3,500 per annum.[2] The Secretary has, therefore, divided the total number of each species

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[1]The Secretary made no effort to determine separately the cost of selling and buying but lumped the two together, although it is obvious from the Record (p. 59, n. 2, *ante*) that the cost of buying is materially less than the cost of selling. Buying rates are not involved, and since most of the agencies are predominantly sellers and not buyers, they manifestly cannot recoup the loss in selling through the application of increased rates for buying, which the Secretary's orders allowed, whether or not the buying rates are, as appellants believe, higher than the traffic will bear, and consequently incapable of actual realization.

[2]FF. 143, R. 97.

sold by the hypothetical performance assumed, for the purpose of determining the number of salesmen required to conduct the business on such hypothesis, and then multiplied the assumed annual service value per salesman by the number of salesmen so determined. Having thus arrived at the total cost of salesmanship for each species,[3] this figure is in turn divided by the total number of each species handled, whether bought or sold (although the evidence shows that the cost of selling exceeds the cost of buying), and the quotient adopted as the reasonable cost of selling per head for each of the several species.

In the year 1931 there were 188 full year salesmen and buyers of cattle in the Kansas City market, 50 swine sales-

[3]The resulting difference in this hypothetical cost of salesmanship and its actual cost is much greater than that indicated by the tabulation attached to the petition as Exhibit C (R. 130A). Salesmen, as indicated in the statement, participate in the performance of other functions, such as yarding, office work, supervision (particularly by owners), and the making of trips to the country for the purpose of inspecting livestock, advising growers, acquainting themselves with the condition, feeding, etc. of livestock for the purpose of enabling the salesmen to obtain the best possible price for the shipper both through advice as to time of shipment and first-hand acquaintance with the livestock. The Government accountant allocated salesmen's salaries among these several functions, according to the time devoted to each, with the result that the cost of salesmanship as determined by the Government's accountants and set out in the table on the exhibit in question is materially less than the total cost of salesmen's salaries. Under the basis adopted by the Secretary, salesmen's salaries are allocated wholly to the cost of salesmanship, but reduced in amount below actual salary roll by the assumption that in the case of cattle, for example, 79 cattle salesmen and buyers should perform all of the services now performed by 188. If the Secretary's allowance of $4,000 as the reasonable value of the services of the salesman or buyer be multiplied by the actual number of such persons in service, instead of the number determined by the Secretary, the reasonable cost for cattle would be $752,000 instead of $316,000. This difference is almost sufficient to account for the entire discrepancy, $422,072, between so-called reasonable cost for all functions and species as determined by the Secretary and actual cost (Pet. Ex. 7, col. 9, R. Vol. III, p. 9).

men and 15 sheep salesmen. For the services performed by them the Secretary allowed but 79 cattle salesmen, 12 swine salesmen, and 8 sheep salesmen.[4] The number of cattle salesmen and all sheep salesmen would thus have to be cut in half, and the number of swine salesmen would have to be quartered, or, if more salesmen were employed, they would be required to act without pay, or if owners, without compensation for their services, or the agencies by whom employed would have to absorb the resulting loss. This result, flowing from the hypothetical standard assumed, is in itself sufficiently startling to challenge attention, and especially when it is borne in mind that under all of the uncontradicted evidence the standard of a salesman's efficiency, as measured by the appellant agencies, and as required in the interest of the growers (for whose benefit their services are performed) is not the number of cattle sold per year but the procurement of the highest possible price for the grower through the time-consuming process of bargaining.

In adopting his hypothetical standards and making them the basis of his salesmanship allowances, the Secretary has not merely ignored the actual salesmanship and buying performance of some of the less efficient agencies, if any are inefficient (of which there is no proof), but he has completely ignored the actual salesmanship and buying performance of even the most efficient firms, and has set up a hypothetical standard wholly unsupported by the practical experience of any, and greatly in excess of the actual performance of any of the agencies. Moreover, he has done this without making any finding of any kind that any agency is being either inefficiently or wastefully conducted.

[4]Pet. Ex. 9, R. Vol. III, p. 11.

1. The salesmanship allowance on cattle is based on a purely hypothetical standard, unsupported by and at variance with actual experience.

There is no evidence that any cattle salesman on the Kansas City Market has ever reached the Secretary's hypothetical standard. On the contrary, salesmen's performance as established by the Government's own exhibits discloses that in every agency, large and small, actual performance has fallen far below the Secretary's hypothetical standard. The Government's own exhibits further disclose that no agency handling a sufficient headage to admit of the application of the hypothetical standard would receive anything like adequate compensation under the rates prescribed and that many of them, including the largest and most efficient, would fail to pay expenses.

Of the agencies engaged in the sale of cattle in 1931, 26 sold approximately 29,000 cattle per year (the Secretary's hypothetical performance for each salesman) or more.[3] None of these agencies, irrespective of volume or personnel, reached the Secretary's hypothetical standard of salesmanship or anything like it. Moreover, 7 of the 26, although, according to the hypothetical standard, already overmanned with regular salesmen, found it necessary to employ 1 and sometimes 2 extra salesmen

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[3]Govt. Ex. 115, pp. 65, 66, R. Vol. III, pp. 31-34; see table, Appendix B. The number of cattle and calves sold by these firms range from 28,109 (Ladd Bros. Commission Co.—Agency No. 62) to 138,133 (Swift & Henry Livestock Commission Co.—Agency No. 59).

in the peak season to dispose of the number of cattle consigned to them for sale.[4]

Among the agencies requiring the employment of extra salesmen during such peak season is John Clay & Co. (Agency No. 54) which in 1931 sold 117,345 head of cattle and calves.[5] This agency, ranking second in cattle sales and first in total volume of business in all species, did a gross business in 1931 (measured by the sales receipts rather than by commissions) of $12,267,430.93.[6] It is a partnership the members of which reside in Chicago. All of its sales therefore are made by hired salesmen whose salaries represent out-of-pocket expense.[7] In 1931 it had throughout the year four regular cattle salesmen.[8] Under the Secretary's hypothetical standard these four salesmen should have been able to sell effectively 116,000 head of cattle, almost exactly the number of cattle sold by this agency which was 117,345. John Clay & Co., however, in 1931, employed for the peak season two extra salesmen, one for a period of seven months and the other for a period of four months[8] making a total of six employed

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[4]*Firm No.*	*Firm Name*	*No. of extra Employed Salesmen*
54	John Clay & Co.	2
10	Producers Commission Co.	1
13	Crider Commission Co.	2
55	Wright & Baucus	1
65	Moffett Commission Co.	1
14	Charles Dixon Commission Co.	2
4	Ragland-Storts & Burrus Commission Co.	1

(Govt. Ex. 115-B, R. Vol. IV, pp. 69, 129, 15, 73, 91, 18, 2; see table, Appendix C.)

[5]Govt. Ex. 115, pp. 65, 66, R. Vol. III, pp. 31-34; see table, Appendix B.

[6]Res. Ex. 243, R. Vol. III, p. 42; see table, *ante*, p. 56.

[7]Govt. Ex. 115B, R. Vol. IV, p. 69.

[8]*id.*; see table, Appendix C.

to handle during the year that number of cattle which the Secretary has concluded should have been sold by four. There is no finding nor evidence that John Clay & Co. is inefficiently operated or is spending more money in the conduct of its business than is necessary to produce the required results for the grower, *i.e.* the procurement of the highest price possible. But one of two conclusions is inescapable. Either the hypothetical standard is incapable of realization, when considered in the light of the real test and function of salesmanship, or John Clay & Co. hired not only one but two unnecessary salesmen and in so doing wasted its money. There is neither finding nor evidence to support the latter and the former must therefore be accepted.

This single illustration of actual performance versus hypothetical standard should alone be sufficient to demonstrate that the hypothetical standard not only rests purely upon speculation but is unattainable in practice. Here was a firm with sufficient volume and a sufficient number of regular salesmen to meet that standard but which found it incapable of attainment, requiring the employment of two additional salesmen (or an increase of 50% in number) in order to conduct the business. Under the Secretary's rates John Clay & Co. would fail by $3,359.54 to meet the out-of-pocket expense of conducting its business in 1931.[9] There is no finding that the business of this agency was inefficiently conducted. It meets the test of volume included in the "guide adopted" (FF. 114, R. 83). It had enough regular salesmen to reach the hypothetical standard in the disposition of all of the cattle if that standard were capable of attainment. It not only failed to reach the standard but under the Secretary's rates would lose

[9]Pet. Ex. 4, R. Vol. III, p. 6, col. j.

money. Certainly as to this firm, which as nearly as any, if not more so, meets all the requirements of the so-called "guide", the guide was not applied.

The same conclusion as to the speculative and unattainable character of the standard when contrasted with practical experience may be drawn from the sales performance of the agency selling the greatest number of cattle, to wit, Swift & Henry Livestock Commission Company (Agency No. 59). This agency sold 138,133 head of cattle.[10] In this firm two of the owners were full-time salesmen.[11] The Secretary's findings indicate that it should be possible for an efficient salesman to sell even more than the hypothetical standard.[12] If so, with a slight stretch in their performance these two owner-salesmen should have been able to dispose of all the cattle consigned to them (138,133 head) with the assistance of two full-time employed salesmen, an average of a little over 30,000 apiece. Instead they employed throughout the year four regular salesmen, in addition to which one of their buyers devoted 76% of his time to selling,[13] making a total of seven, whereas under the hypothetical standard from four to five only should have been required. Under the Secretary's rates this firm would have left after paying its actual out-of-pocket expenses (including, according to the Secretary, the salaries of at least two salesmen whose services were unnecessary) $1,111.55 to be divided among the owners.[14] Here again

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[10]Govt. Ex. 115, pp. 65, 66; R. Vol. III, pp. 31-34; see table, Appendix B.

[11]Govt. Ex. 115-B, R. Vol. IV, p. 76; see table, Appendix C.

[12]FF. 143, R. 97.

[13]Govt. Ex. 115-B; R. Vol. IV, p. 76.

[14]Pet. Ex. 4, R. Vol. III, p. 6, col. j. Under the Secretary's formula, this firm is entitled to $3,788.54 for return on the investment. Deducting this from the margin over out-of-pocket expenses at the Secretary's rates would leave this firm with nothing as compensation for the owners devoting their time to the conduct of its business.

we have a firm with sufficient volume to reach the hypothetical standard of the efficiently operated (and there is neither evidence nor finding that it was not), but which was unable to reach the hypothetical standard (although its failure so to do cost its owners out-of-pocket money) and will be left with substantially nothing at the end of the year under the Secretary's rates.

The experience and performance of these two (the largest agencies of all) is typical of all others and the result of the application of the Secretary's rates to the operations of these two representative firms is likewise typical. Moreover, each of these firms sold over 6% of all the cattle sold in 1931 by all the agencies.[14a] Even assuming the elimination of enough agencies to concentrate additional volume in those that remain it is hardly conceivable that the average volume would exceed the volume of business now done by each of these concerns and it is altogether likely that many of the survivors would have a less volume of business. Yet these two firms with sufficient existing volume to meet the Secretary's hypothetical standard were unable to attain it and would lose money under his rates. The conclusion is inescapable that even after the Secretary's order has, as it is intended to do, driven many of these agencies out of business and deprived their owners of a livelihood, the surviving agencies will be unable to attain the hypothetical standard or to earn reasonable compensation or return on investment for their owners.

Of the remaining agencies the Bowles Commission Company (Agency No. 12), like John Clay & Co., uses hired salesmen only, as do the two cooperatives (Producers Commission Company, Agency No. 10, and Farmers

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[14a]Govt. Ex. 115, pp. 65, 66, R. Vol. III, pp. 31-34.

Union Livestock Company, Agency No. 36).[14b] According to the Secretary's hypothetical standard, each one of these agencies, selling wholly through hired help, were overmanned, Bowles having three regular salesmen employed to dispose of 59,216 cattle (which, according to the Secretary's hypothetical standard, should have been disposed of by two), Producers Commission and Farmers' Union each having four salesmen, to dispose of 80,863 and 74,364 head, respectively (each of which should have been able to dispose of these cattle with three salesmen at the most), whereas Producers actually employed an extra salesman, in addition to its four regular salesmen, for three months to dispose of theirs.[14c] None of the agencies, therefore, which sold wholly through hired salesmen, attained the hypothetical standard, and each hired more men than would have been necessary had they done so. Yet there is neither evidence nor finding that they were inefficiently operated or wasteful in their expenditures.

In each of the other agencies making up 26 having sufficient volume to reach the hypothetical standard there are owner-salesmen in varying numbers. In but two (Poole-Dempsey-Rutherford—Agency No. 48 and Robinson-Hoover Commission Company—Agency No. 56) did the owners do all of the selling, in each case, however, falling far short of the hypothetical standard, salesmen performance in respect to the first firm being 12,125 head and in respect of the second 14,844.[14d]

[14b]Govt. Ex. 115-B, R. Vol. IV, pp. 13, 129, 134; see table, Appendix C.

[14c]*id.*; Govt. Ex. 115, pp. 65, 66, R. Vol. III, pp. 31-34; see tables, Appendices B and C.

[14d]Govt. Ex. 115-B, R. Vol. IV, pp. 60, 75; Govt. Ex. 115, pp. 65, 66, R. Vol. III, pp. 31-34; see tables, Appendices B and C.

All of the other firms selling approximately 29,000 head of cattle a year[15] used both owner-salesmen and salaried salesmen.[16] In some cases under the hypothetical standard one salesman should have been able to sell all the cattle. In all cases more regular salesmen were employed in addition to owner-salesmen than would be required to meet the hypothetical standard, and in the case of five of these agencies,[16a] as well as the cases of John Clay & Co. and Producers Commission Company, already noted, one or more extra salesmen were employed during the peak season.[16b]

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Firm No.	*Name of Firm*
59	Swift & Henry Livestock Commission Co.
46	National Livestock Commission Co.
82	Wilson, Egan & Co.
63	Martin, Blomquist & Lee Commission Co.
73	Witherspoon Livestock Commission Co.
84	Cassidy Southwestern Commission Co.
42	Long & Perry Commission Co.
35	Drumm-Standish Commission Co.
13	Crider Commission Co.
71	Ry[illegible]-Robinson Commission Co.
55	Wright & Baucus Co.
18	Haggart, Wilson Commission Co.
83	Burlington Livestock Commission Co.
25	Stuart Gillespie & Co.
65	Moffet Commission Co.
14	Charles Dixon Commission Co.
4	Ragland-Storts & Burrus Commission Co.
70	W. C. Kile Commission Co.
26	Wester Bros. & Smith Commission Co.
62	Laird Bros. Commission Co.

[16]Govt. Ex. 115-B, R. Vol. IV; see table, Appendix C.

[16a]

Firm No.	*Firm Name*
13	Crider Commission Co.
55	Wright & Baucus Co.
65	Moffet Commission Co.
14	Charles Dixon Commission Co.
4	Ragland-Storts & Burrus Commission Co.

[16b]Govt. Ex. 115-B, R. Vol. IV; see table, Appendix C.

It therefore makes no difference whether all the agencies be considered together, or whether particular agencies be chosen for the purpose of testing the hypothetical standard; none attained it, and none could.

Obviously, the remaining agencies selling less than 29,000 head of cattle per year could not be expected to reach the hypothetical standard. This does not mean, however, that their performance is inefficient or their operations wasteful, or that, if they had the requisite number of cattle, they could reach such standard. A single illustration will suffice. The prices received by growers on heavy cattle ranged from $37 per head to $69 per head, a spread of $32.[17] The top price was received for its growers by Agency No. 34, the Warren Cummings Livestock Commission Company, having but a single owner, Warren Cummings, who is a cattle salesman.[18] This agency sold 26,859 head of cattle in the year 1931,[19] which, according to the Secretary's hypothetical standard, should all have been sold effectively by the owner. On the contrary, he employed two additional regular salesmen throughout the year and an extra salesman for a period of three months,[20] but with the result that his growers received the top price. Under the Secretary's rates Mr. Cummings, after paying the cost of operating his agency, will have $2,462.63 left.[21] According to the Secretary's order, he is entitled to $898.31 for a return on the investment of capital employed in the conduct of his business, leaving him $1,564.32 as compensation for selling and supervising the operations of an agency which pro-

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[17]Res. Ex. 249, R. Vol. III, p. 43.

[18]**Govt. Ex. 115-B, R. Vol. IV, p. 44; see table, Appendix C.**

[19]Govt. Ex. 115, pp. 65, 66, R. Vol. III, pp. 31-34; see table, Appendix B.

[20]Govt. Ex. 115-B, R. Vol. IV, p. 44; see table, Appendix C.

[21]Pet. Ex. 4, R. Vol. III, p. 6, col. j.

cured for its growers the top price paid at the market.[21a] The question naturally arises, why did Mr. Cummings employ not only two regular salesmen but an extra salesman for a period of four months, to dispose of 27,000 head of cattle, if he himself could have sold them all effectively with the same result. It may be said that if he had had more cattle to sell he and his employees might have sold more with equally satisfactory results. This is again purely speculative. But when his actual performance is added to that of the 26 firms selling approximately 29,000 cattle or more, none of which reached the hypothetical standard of performance, and many of which, although according to such standard already overmanned, found it necessary to employ additional salesmen during the peak season, it would seem to be obvious that the hypothetical standard is not only unsupported by the experience of any agency but is incapable of attainment in practice except, if at all, at the sacrifice of the grower's interests.[21b]

The sales performance of the ten firms selling the largest number of cattle[22] are relatively uniform, making allowance for the variations which must exist in any business, ranging from a low of 14,644 (Witherspoon)

[21a]Pet. Ex. 4, R. Vol. III, p. 6, cols. k and l.

[21b]See also p. 39, footnote 1, *ante*, describing the business of John M. Nichols (Firm No. 9) who obtained the highest proceeds per head for yearling cattle and the second highest for heavy cattle, but who handled far less volume than the Secretary's hypothetical performance.

[22]Agencies Swift & Henry (No. 59), John Clay & Company (No. 54), National Livestock Commission Company (Agency 46), Wilson, Egan & Company (Agency 82), Martin Blomquist & Lee (Agency 63), Producers Commission Association (Agency 10), Farmers Union Livestock Commission Company (Agency 36), Witherspoon (Agency 73), Cassidy Southwestern (Agency 84), Long & Perry (Agency 42). (Govt. Ex. 115, pp. 65, 66, R. Vol. III, pp. 31-34; see table, Appendix B.)

to a high of 19,733 (Swift & Henry) per salesman for those companies selling wholly through owners or regular salesmen employed throughout the year.[23] John Clay & Company, with four regular salesmen and two extras (one for 4 months and the other for 7 months)[23a] sold 117,345 cattle, or an average of 19,558 cattle for each of the six salesmen employed during the year, or of 23,866 if the two extra salesmen be regarded as the equivalent of 4/12 and 7/12 of a salesman respectively.[23b] Since it took the six salesmen to sell the cattle, the former calculation is more in accordance with actual performance, but if we assume that the extra salesmen, if cattle had been available, could have sold at the same rate throughout the year, the average performance is still but 23,866, or approximately 20% below the hypothetical performance assumed by the Secretary. The other one of the ten which also employed an extra salesman for a portion of the year (Producers Commission Association) sold 80,863 cattle with four regular salesmen and one extra salesman for 3 months. The five salesmen thus averaged 16,173 cattle, or again on the basis of counting the extra salesman as only 3/12 of a salesman, at an average of 19,026.[23c]

Under the Secretary's rates these 10 agencies would fail by $19,521.70 of meeting operating expenses, without any allowance whatever for owner-salesman compensation, supervisory services, or return on investment. The Secretary in his order allows $26,309.88 for return on the investment of these agencies. This added to the foregoing

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[23]Govt. Ex. 115-B, R. Vol. IV; see tables, Appendices B and C.
[23a]Govt. Ex. 115-B, R. Vol. IV, p. 69; see table, Appendix C.
[23b]Govt. Ex. 115, pp. 65, 66, R. Vol. III, pp. 31-34; see table Appendix B.
[23c]Notes 23a and 23b, *supra*. See table, Appendices B and C.

figure would produce a total aggregate deficit for these 10 agencies of $45,831.58, with no allowance whatever for the services of owner-salesmen.[24]

Of these 10 agencies the National Livestock Commission Company would make the best showing under the Secretary's rates, which as applied to the 1931 business would leave it $8,247.90[25] to divide among five owners,[26] or $1,649.58 apiece as compensation for their personal services in sales and supervision and for return on investment. The Secretary allows this agency $2,626.98 for the latter purpose,[27] which would leave this firm, ranking third in volume of cattle sold and fourth in results, as judged by returns to the growers,[28] $5,620.92 to compensate 5 owners for their services in selling livestock, or at an average rate of $1,124.18,[29] clearly less than reasonable compensation.

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[24]Pet. Ex. 4, R. Vol. III, p. 6, cols. j and k.
[25]Pet. Ex. 4, R. Vol. III, p. 6, col. j.
[26]Govt. Ex. 115-B, R. Vol. IV, p. 56.
[27]Pet. Ex. 4, R. Vol. III, p. 6, col. k.
[28]Res. Ex. 249, R. Vol. III, p. 43.
[29]Pet. Ex. 4, R. Vol. III, p. 6, cols. l, m, n.
This is the agency with which Mr. Olander is connected, whose graphic description of his typical day's work and of the care and time consumed in bargaining for the best price have been set out in the statement (pp. 18, 24-27 n, *ante*). As we said in that connection, all the evidence shows that procurement of the best price and not speed or volume is the test of sales efficiency. Measured by this test, this firm ranks among the highest, obtaining on heavy cattle an average of $61.94 per head for its growers as against a high of $68.94 and a low of $36.52 (n. 10, *supra*). It sold 99,113 cattle (Govt. Ex. 115, pp. 65, 66, R. Vol. III, pp. 31-34; see table, Appendix B). Under the Secretary's hypothetical standard it should have been able to dispose of these cattle with four salesmen, instead of which they were sold by three owner salesmen and three salaried salesmen (Govt. Ex. 115-B, R. Vol. IV, p. 56; see table, Appendix C), each of whom cost money. Perhaps if Mr. Olander, his associates and employees had sold with less care and taken less time in bargaining than that disclosed by his evidence, they could have sold these cattle or more with four salesmen. But this is purely speculative. The uncontradicted fact is that to attain these results this firm, with a high

2. The opinion evidence which alone is relied on by the Secretary in estimating reasonable salesmanship performance, if entitled to any weight at all, is thoroughly inadequate to justify the arbitrary discarding of all actual performance.

It is stated in Finding 140 of the Secretary's order (R. 96) that a salesman employed by one of the respondents testified that a good salesman "should sell" 1,500 cars of cattle in a year; that another witness employed by a respondent testified that a good salesman "can sell well" as many as 2,000 cars of cattle annually; that one of the respondents testified that a butcher salesman "could sell" 1,600 cars of butcher cattle in a year, and that he "should be able to sell" that many cars of steers; and that the same witness testified that a hog salesman "should sell" more than 1,600 cars of hogs and that a sheep salesman "should sell" from 1,500 to 2,000 cars of sheep annually.

No witness testified that he, or any other salesman, had sold in such quantities.

The evidence upon which these conclusions are based and upon which their validity depends is the testimony of three witnesses: W. T. Angle, manager of the Producers Commission Association (a cooperative); W. B. Ecton, a salesman for that Association; and John W. Murphy, a salesman for the Bowles Livestock Commission Company.

In reply to the question "how many cars of cattle do you handle in a year?", Murphy testified "Well, off hand,

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volume and obtaining unusually good prices for its growers, used six salesmen, two more than the Secretary thinks they should have. There is no evidence whatever that a lesser number could have sold the same volume to equal or comparable advantage.

I don't know, *and that would depend on the conditions. One hundred and one things could develop in that"* (R. 325). The witness was then asked, without reference to any particular year, and without reference to the Kansas City or any other stockyards, the leading question whether he had *ever* handled as many as 1,500 cars in one year. He had previously testified that he had entered the commission business and begun the selling of cattle at Denver; that he was in Denver for three years, and then in Sioux City for four years (R. 319). He had previously testified that localized conditions at stockyards affect the facility and volume of sales; and that particularized buying had greatly increased the work and responsibility of salesmen and decreased the rapidity and volume of sales (R. 319-320). The witness answered the question in the affirmative and then promptly corrected himself and said, "Well, off hand, I couldn't tell you how many I have sold" (R. 326). Upon inquiry by the examiner, he said he did not know how many cattle he sold in 1929. In reply to the leading question, "You don't know whether it was 1,500 or 1,000 or not?" he answered "I couldn't say just what it was, because I haven't any recollection of what our business was, that particular year." He also denied his ability to testify as to how many cattle he had sold in 1930 (R. 326).

Being questioned with reference to his opinion as to good salesmanship, he testified that no human being on earth could tell what number a "good" salesman could sell in a year "if he had them to sell." To the question, "Do you think he could handle as many as 1,500 cars and handle them properly?", he first answered affirmatively and then corrected himself to state, ***"Yes, that would depend altogether on market conditions, climatic conditions and the various things that enter into livestock selling"*** (R. 327).

Upon cross-examination, he testified "I could go down to the yards, and if I were just interested in disposing of these cattle at any price I could sell a very large number. *There is a difference between simply getting rid of cattle and really selling them*" (R. 327).

The above testimony was given during the original hearing in 1930 and related to the year 1929. When recalled, the witness testified to a decline in his firm's business between 1929 and 1931; to the continued prospect of a "tremendous" loss in volume of business; to the increased difficulty because of sales cost, falling markets and declining prices (R. 773-774, 776). He also testified that the services of the three salesmen and one buyer employed by his firm during 1931 could not have been dispensed with without loss to its customers (R. 777). And finally, he testified that "Compared with two years ago, it requires a considerable more time to sell cattle on account of the declining market which we have had" (R. 782). At the hearings in 1932 he was not asked to state his opinion of the standard for salesmanship performance; he did testify that conditions in the business had so changed as generally to increase the difficulty of sales (R. 776).

The second of the three witnesses relied upon by the Secretary was W. T. Angle. The qualifications of this witness to give opinion evidence as to salesmanship performance standards are open to question, since he was not a salesman but Manager of the Producers Commission Association; and he admitted, on cross-examination, that he did not sell livestock and had not sold any livestock worth mentioning (R. 343). He asserted that he had given some consideration to the number of cars which a salesman should be able to handle "taking the livestock just as it

comes to the market." But he refused, when asked to state his "views" on the question, "assuming that he [the salesman] could get all he could handle," to state what number of head a good salesman should sell. Instead, he discoursed at length upon the variations and conditions in the market and between various types and grades of cattle. It was only when pressed by the examiner, and in answer to a leading question whether a salesman, if he has that many cattle to sell, could dispose of 1500 carloads in a year, that the witness answered "Yes." (R. 337-340.) And the force of this affirmance, upon which the Secretary relies, completely evaporates when, in elaborating upon his answer, the witness says that the question is really how many buyers will buy from a salesman on a given day and not how much a salesman can sell (R. 340). The witness's refusal to be content with a simple affirmance and his insistence, in an effort to be truthful, upon making assumptions as to the volume of livestock available, the degree of specialization of the salesman in question, the demand for the cattle, and the availability of buyers, clearly indicates that the answer was predicated upon a hypothesis which was not included in the question. And that, for this reason, the answer was not responsive (R. 340).

In fact, the assumptions upon which this witness predicated his opinion as to salesmanship performance were so utopian and so far removed from the fact, that his testimony cannot be said to be evidence at all. There is nothing in the record to show that this inarticulate hypothesis accords with the facts. It is not evidence. It is the vaguest speculation.

Moreover, the witness's optimistic estimates as to what a cattle salesman ought to be able to do are clearly at vari-

ance with what he, as manager, and his board of directors, had been able to obtain from the salesmen in their employ. The witness himself testified that he and the directors were considering the employment of additional salesmen and the further departmentalization of the firm's selling; and that during the year 1929 the cattle salesmen employed by the Producers Commission Association handled only an average of 432 cars (R. 343, 345). Testifying at the rehearing in 1932 the witness further limited the force of his previous testimony by testifying that "There may be some changes in the volume of livestock moving that would affect the decisions that I gave at that time [1930]. The volume of receipts in our market has now changed in some respects and the volume of business we handle on any species of livestock materially affects the cost in handling it" (R. 880). He admits that "the volume of sheep, cattle and hogs going through our marketplace for the years of 1930, 1931 and 1932 was lighter than that in 1929 and the years immediately previous thereto" (R. 880).

The third and last witness upon whose testimony the Secretary relies is W. B. Ecton, a salesman employed by the Producers Commission Association under the management of the witness Angle (R. 363-369).

The testimony of this witness is subject to the same criticisms as that of the witness Angle. It is to be remembered that he is one of the cooperative's salesmen who averaged 432 cars of cattle during the year 1929. It is immediately apparent that the statements of this witness as to the number of cars a salesman ought to be able to sell are made with reference to conditions completely at variance with those actually existing, under which he has himself been able to attain no such standard. His

testimony means little more than that, given ideal conditions with all the variable factors in favor of ease and facility of sale, it is not impossible for a salesman to attain such a standard.

Upon recall at the hearing in 1932, the witness limited the force of his testimony at the original hearing by referring to the effect of the depression upon the actual market and the resultant difficulty of selling cattle. His further testimony upon recall makes it very clear that the volume of sales depends for the most part, not upon the efficiency of salesman but upon the immediate demand for cattle of the type available on the market (R. 789-793).

The volume of sales is not the measure of efficient salesmanship. These opinion witnesses did not testify that it is, and abundant affirmative evidence in the record establishes that it is not. Thus, Fred H. Olander, who has been in the commission business for over 20 years and who is a partner in the National Live Stock Association Company testified (R. 217):

> "It has been my experience that the first bids placed on livestock are much less than I finally get for them. I may have to work all day, and I may have to work a week, and I have worked as long as a week selling one load of cattle. The commission man is interested in getting the highest possible price, and he is willing to work as long as it is necessary to do that."

At R. 219 he testified:

> "I don't hire a salesman on his ability to dispose of cattle. You can sell them at the best possible price as the result of the exercise of your judgment, and then there are salesmen who desire to just get the cattle sold. I don't hire a salesman because he may

have ability to dispose of a good many cattle, but I hire him because I want him to put every ounce of his ability and every pound of his effort into each and every sale that he makes. The matter of volume that he sells does not have any bearing on his salary. The volume of his sales would not determine whether we would continue to carry him, even though we were carrying him at a loss. The factor would be whether he was getting good prices."

Further at R. 220:

"The number of cattle handled by a salesman varies depending upon the class of receipts. * * * There are instances when we may work cattle for two or three days and not get a satisfactory price and then the owner may ship them on to Chicago."

3. The Secretary completely disregarded uncontradicted evidence of numerous uncontrollable and variable factors affecting salesmanship performance.

Any expression of opinion as to quantitative standards for future selling performance necessarily involves a forecast of market conditions. As appears from the discussion under the preceding heading, the so-called opinion evidence, upon which alone the Secretary's findings as to reasonable salesmanship performance were based,[1] was predicated upon the assumed existence of ideal conditions. The record is replete with uncontradicted evidence negating such assumptions and conclusively establishing the existence of variable market conditions such as to render the opinion evidence worthless. In basing his findings upon

[1]FF. 140-143, R. 96-97.

the opinion evidence alone, the Secretary completely disregarded this uncontradicted evidence.

The most obvious variations are those in the receipt of livestock by the Kansas City stockyards and, consequently, in the supply of livestock available to be sold. The Secretary of the Kansas City Stockyards Company, Laurence G. Trickett, characterized this condition as one of the "biggest hazards in conducting both the stockyards and the commission business" (R. 766). He further said:

> "There is no way to ascertain beforehand just how many receipts of any species will come in to a commission firm or to the stock yards. The fact that the Kansas City market is a large stocker and feeder market accentuates the peak receipts in the fall. The fact that the Kansas City market is a larger stocker and feeder market accounts for a greater variation from its normal than exists at other markets such as Chicago. This increases operating costs" (R. 766).

The total receipts of cattle, and the variations therein, during the year 1931 are fairly illustrative of the degree to which and the manner in which the supply of livestock available for sale may vary in any one year. In that year, 1,667,982 head of cattle were received at the Kansas City stockyards. Of that number, 201,489 were received during the month of October. The average receipts per month were 138,998. In other words, during the peak month, October, receipts exceeded average monthly receipts by 41%. Cattle were received on 310 days of the year 1931. The average weekly receipts were 31,989, the largest week being that of October 12 to October 17, during which 51,222 head of cattle were received. This week exceeded

average weekly receipts by approximately 48%. In any week, Monday was by far the heaviest day. The total receipts on Monday for the year were 825,611; the average receipts for each Monday, 15,877. Approximately half of all the cattle received during each week was received on Monday. Average receipts on that day were 2.95 times the average daily receipts, 5,380, and the total receipts on Monday 49.5% of the total annual receipts. Even more impressive were the variations in daily receipts, which averaged 5,380 and ranged to a high of 30,002 head.[2]

The situation is further complicated by the great variety in type and grade of cattle received and handled at the Kansas City market.[3] In his testimony (R. 238), Mr. Olander, Vice-President of the National Livestock Commission Company, stated that the variance in types and grade at the Kansas City market is greater than that at any other. This statement was corroborated by Mr. Murphy, a livestock salesman for the Bowles Livestock Commission Company (R. 325). The ease and facility of sale, and therefore the time necessary for sale, vary as between different grades of livestock.[4] The variation in types and grades of livestock received for sale, and the total irregularity of the volume of receipts, prevents the standardization of salesmanship performance.

A high volume of sales depends upon there being present in the market an immediate buyer demand coincident with and corresponding to the supply of livestock available to be sold. It has been said that supply is irregular and

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[2]Govt. Ex. 116, R. Vol. III, p. 39; see n. 1, p. 29, *ante*.

[3]R. 220, 223-224, 325, 331, 338, 357, 358, 363, 766, 801, 840.

[4]*id.*

unpredictable both as to volume and character. Demand is no more consistent nor capable of prediction.[5] On a rising market, when demand is active, sales may be accomplished with comparative facility; but on a declining market the rapidity and volume of sales is subject to the delay involved in the search for buyers and in bargaining over the terms of sale.[6] The time thus spent cannot be sacrificed to increased volume without a sacrifice of the interests of the producer.

Purchases at the Kansas City market have become increasingly particularized, being made in small quantities and with reference to the immediate needs of the purchasers. For this reason they require sorting and grading of livestock before purchase. These are factors which tend to slow up and to decrease the volume of sales.[7]

The difficulty of sales does not vary with the number of livestock sold alone.[8] Other things being equal, it is as difficult to sell 5 as 50 head. The testimony of Mr. Trickett upon this point is again helpful, as is that of Mr. Henderson, office manager for the Moffett Livestock Commission Company. Mr. Trickett testified (R. 762):

> "Just as much time and effort and work are required in handling the small number of head, 5 head, as is required in handling the large number of head.

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[5]R. 224-225, 239, 360, 752, 755, 756, 791.

[6]FF. 65, R. 55; R. 207, 755-756, 776-777, 782, 792-793, 803, 965.

[7]In Finding 28 (R. 40) the Secretary said that "increasingly respondents' business has taken on more of the aspects of the retail handling of a commodity." This conclusion is not, however, reflected in his allowance for salesmanship performance, in spite of the uncontradicted evidence which supports it, and which points out the effect which this change in the nature of the business has had on possible salesmanship performance. R. 306-307, 319, 324, 331, 663, 752, 776-777, 790, 792, 841, 922.

[8]R. 328, 364.

> Usually there is just as much time required of the commission men to sell 5 head as there would be to sell a large shipment by rail. In the handling of the small lots it is necessary to keep the ownership separated, it requires just as much man power and labor to handle 5 head as it would to handle the larger number of head."

Mr. Henderson testified (R. 315):

> "It is just as easy to sell 20 steers as it is to sell one calf and sometimes it is easier. If you have a carload of fat cattle and a packer comes in and wants them you can sell them in two minutes. You may haggle with this one calf for half an hour or half a day."

Volume and facility of sales are, however, adversely affected by the lack of uniformity in grade and type, and of identity in ownership. Consignments which are mixed as to either grade, type or ownership require more thorough grading and sorting before sale, and identification throughout negotiation, sale and delivery.[9] Mixed consignments to the Kansas City market, both as to grade and ownership, have increased.[10] The volume of livestock received by truck, which is usually mixed, as to grade, type and ownership, has also greatly increased.[11] The degree to which these tendencies prevail is a definite factor affecting future salesmanship performance. Consignments have been smaller, proportionately to total volume.[12] These facts all result in smaller drafts and, therefore, in decreased volume of sales.[13]

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[9]R. 317, 338-339, 364-365, 442, 528, 540-541.

[10]FF. 23-24, R. 38; R. 442, 509-510, 540-541, 603, 609, 727-728, 967, 1047.

[11]FF. 26, R. 38-39; R. 280-281, 304-305, 431, 464, 510, 612, 706, 709, 727-728, 762-763, 769, 774, 1047.

[12]R. 317, 509-510, 540-541, 603, 609, 790, 1035, 1045.

[13]FF. 28, R. 40; R. 306, 612.

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4. In determining so-called reasonable cost of salesmanship the Secretary acted arbitrarily, without evidence, failed to follow the principle applied in the Tagg Brothers case and applied a standard at variance with the purposes and objects of the Act.

The evidence of the witnesses relied upon by the Secretary and reviewed above, vague, uncertain and qualified as it is, hardly rises to the dignity of opinion evidence. It is clearly at variance with actual experience and as clearly ignores the conditions under which cattle are actually sold. In accepting it the Secretary has substituted speculative prophecy for actual experience as the test of sales performance. The evidence relied on is certainly insufficient to overcome the evidence, hereinbefore reviewed, of actual performance. It is the general rule that the finding of an administrative body or officer will not be disturbed if sustained by the evidence. This, however, does not mean the existence of some evidence, in the mind of such officer sufficient. If the record as a whole is such that the verdict of a jury based thereon would be compelled to be set aside in any jurisdiction, except where the scintilla of evidence rule prevails, the finding of an administrative officer on the same kind of a record is clearly entitled to no greater weight. We doubt whether even in those limited jurisdictions where the scintilla of evidence rule prevails a verdict of a jury as to the test of salesmanship performance similar to that rendered by the Secretary would be permitted to stand.

However that may be, the applicable rule in this Court is that an administrative finding may not be supported upon the basis of the scintilla rule[1]; and it is further the estab-

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[1] *Interstate Commerce Commission* v. *Union Pacific R. Co.*, 222 U. S. 541, 547-548.

lished doctrine that it is arbitrary action for an administrative body to base a rate order upon prophetic evidence which is at war with evidence of actual experience[2]. The findings of the Secretary in this case in respect of salesmanship performance offend both of these rules, as well as the rule requiring that rate orders be made in consideration of their actual effect in practice[3].

If the officers of one of these agencies, which is a corporation, or the partner in one of these agencies which is a partnership, were being sued for waste, and should be found guilty thereof by a jury on a record such as was before the Secretary, no Court in this country would permit such a verdict to stand, based as it would be upon pure hypothesis and contrary, as it would be, to all practical experience. As we have said before, this is not a case where the Secretary, in the exercise of his administrative discretion, has adopted a standard of performance reached by some but not by all. He has adopted a hypothetical standard reached by none, and according to the conclusions necessarily to be drawn from the record, unattainable by any. His only justification can be that if there were less firms in the business their salesmen might sell more cattle. But this is wholly speculative, particularly when tested in the light of the actual experience of the most efficient firms, having the largest volume of business and under every incentive to keep down costs. These, like the others, have failed to reach the standard set and for the very good reason, as appears from all the uncontradicted testimony, that sales performance does not depend upon volume but upon a multitude of other factors entering into the accomplishment of the salesman's duty,

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[2]*West* v. *Public Utility Commission*, 294 U. S. 79, 82.
[3]*Smith* v. *Illinois Bell Telephone Co.*, 282 U. S. 133, 160.

which is not to sell all the cattle that he can, but to get the best price that he can. This factor the Secretary has wholly ignored.

Nor has the Secretary followed the standard set up by himself in his own findings and order, which recite:

> "The guide adopted in this case is that under ordinary conditions as they prevail on the Kansas City market, a schedule of rates should be high enough to produce sufficient gross revenues to pay all reasonable costs and a reasonable compensation for management and risk, that is, a reasonable profit, to the owner or owners of any firm which receives enough livestock to enable it[1] handle its business in a reasonably efficient and economic manner".[2]

As we have repeatedly pointed out, there are many firms having a sufficient volume to handle their business in a reasonably efficient and economic manner, and to reach the Secretary's hypothetical standard, but none have done so. Instead of allowing as the reasonable cost of salesmanship expenses incurred "under ordinary conditions as they prevail on the Kansas City market" and providing "a schedule of rates * * * high enough * * * to pay all such reasonable costs", he has ignored actual conditions and all actual experience and established rates predicated upon purely hypothetical cost.

It is said in the same finding that the principle set forth in the "guide" stated was followed in the *Omaha Commission Rate Case* and approved in *Tagg Brothers* v. *United States,* 280 U. S. 420.

As pointed out in the opinion of the District Court in

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[1] *Sic.*

[2] FF. 114, R. 83.

the *Tagg Brothers* case[3], the Secretary there did not act "on any mere theoretical estimation, but on actual experience as disclosed by the evidence" (29 Fed. (2d) at p. 755). The fact that the Secretary used typical experience in making his allowances in the *Tagg* case has also been adverted to by the majority of the court below in this case (R. 165). An examination of the record of the *Tagg* case in this Court (No. 45, Oct. Term, 1929) shows that the avowed plan which the Secretary followed as stated in his findings in determining allowable costs was to adopt "a normal of the actual cost of the particular item to those firms whose financial condition exhibits ordinary efficient management of their business" (FF. 14, R. 32 of *Tagg* record). In respect of salesmanship, the Secretary in that case notes in his findings that opinion evidence as to performance was presented, and that such opinion evidence placed the annual number of cars that a salesman could sell at more than two to three times higher than the performance adopted by the Secretary as standard (FF. 16-18, R. 32-34, *id.*), just as the opinion evidence in this case places the performance many times higher than actual experience justifies. In that case, also, the Secretary had evidence of the actual performance of salesmen (FF. 17, R. 33, *id.*). This performance he classified by groups of firms according to volume, giving weight to performance in groups in which the salesmen, by reason of volume or of lesser number of salesmen, had best opportunity to display their ability (*id.*). The allowance made for salesmanship cost (FF. 18, R. 33-34, *id.*) has close relation to the actual performance figures found in Finding 17 in that case, the performance figures taken by the Secretary being reached or approached

[3]29 F. (2d) 750.

by a substantial number of salesmen in that case. Not so here.

The Secretary's allowances for cost of cattle salesmanship are also at variance with one of the main purposes of the Act, and consequently involve the application of a standard not contemplated thereby. One of the chief purposes of the Act was to insure the receipt of adequate prices by the growers, free from monopolistic practices and manipulation.

As we have said in the statement, the only social or economic justification for these market agencies, aside from their own selfish interests, is in the procurement of the best possible price for the grower. The evidence in this case establishes without contradiction that the test of sales performance is not volume or speed, but the price obtained. It also discloses that the speed with which sales may be made, and a satisfactory price obtained, are influenced by a multitude of considerations beyond the control of the seller. Among these are the day-to-day attitude of buyers, the volume of daily receipts, the character of the demand, whether brisk or sluggish, the size of the "drafts" sold, the ever-increasing tendency towards mixed shipments of different grades and an increase in drive-ins.[4] As well put by one of the very witnesses on whose evidence the Secretary relies, the number of cattle which a salesman can handle in a year "would depend upon the conditions. One hundred and one things could develop" (R. 325); and again at R. 327:

> "I could go down to the yards, and if I were just interested in disposing of these cattle at any price I could sell a very large number. *There is a difference*

[4] *Ante*, p. 129.

between simply getting rid of cattle and really selling them."

The Secretary in accepting volume as the test of sales performance has ignored alike the purpose of the sale and the purpose of the Act. He has thus set up a standard not only unattained and unattainable in practice, but one which ignores the real function of the salesman and the interests of the grower, whose protection was one of the chief objects for which the statute was enacted.

The Secretary's hypothetical standard of cattle salesmanship is thus demonstrated to be unsupported by and at variance with actual performance, however judged, and, when the uncontradicted facts recited above are considered as a whole, to be demonstrably unattainable under the conditions existing at the Kansas City market. As we have said before, there is neither evidence nor finding that any of these agencies are operated inefficiently or wastefully.

5. The salesmanship allowance on hogs and sheep is also based on the adoption of a hypothetical standard, arbitrary and below cost.

The hypothetical standard set for hogs (85,000 head per annum)[1] was also not reached in 1931 by any of the firms, some of whom had one hog salesman and others two. The three agencies coming nearest thereto were Kennaley (Agency No. 51), Martin, Blomquist & Lee (Agency No. 63), and Farmers Union Livestock Commission Company, a cooperative (Agency 36), selling respectively 159,184, 150,806 and 147,922 hogs.[2] As we have already pointed

[1]FF. 143, R. 97.

[2]Govt. Ex. 115, p. 67, R. Vol. III, p. 35; see table, Appendix B.

out, the accuracy of Kennaley's cost figures is seriously open to question, since he is no longer in business.[3] Moreover, as further pointed out, he himself said that he had more hogs than he could sell to the best advantage of the shipper.

Martin, Blomquist & Lee sold 150,806 hogs with the use of two salesmen, or an average of 75,403 hogs per salesman.[4] It also did a substantial sheep business and ranked fifth in cattle sales. It is therefore included among the ten ranking first in the sales of cattle, while it ranks second in the sales of hogs and well up in the sales of sheep. Under the Secretary's rates it would have left, after paying all out-of-pocket expenses, including the salaries of hired salesmen, $2,419.08 as owners' compensation and as return on investment. For the latter, the Secretary's order recognizes an allowance of $3,159.28, which so allocated would leave the seven members of this firm without any compensation whatsoever for their own personal services in the sale of livestock and supervision of the business. Eliminating the allowance for return on the investment altogether, each of the seven would receive as compensation for his services a little more than $300 per year.[5]

The only other firm which came within striking distance of the Secretary's hypothetical standard for hog salesmanship is the cooperative Farmers Union Livestock Commission Company, selling 147,922 hogs.[6] For this purpose it employs two hog salesmen selling an average of 73,961 hogs per annum.[7] These two salesmen, however, were

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[3]See *supra*, p. 15.

[4]n. 2, *supra*; Govt. Ex. 115-B, R. Vol. IV, p. 86; see tables, Appendices B and C.

[5]Pet. Ex. 4, R. Vol. III, p. 6, cols. j, k, l, m.

[6]n. 2, *supra*.

[7]n. 4, *supra*.

assisted by five yardmen, for whose services no selling allowance whatever has been made by the Secretary.[8] Moreover, while the Secretary bases his hog salesmanship allowance upon a finding, without evidence, that $3,000 a year is a reasonable annual salary for a hog salesman,[9] this concern, one of the three most nearly approaching the Secretary's theoretical standard of salesmanship, paid its head hog salesman $8,800 a year.[10] There is other evidence that this allowance for the value of a hog salesman's services is clearly inadequate and purely arbitrary.

The Secretary's hypothetical performance for sheep salesmanship (250,000 head)[11] was theoretically reached by only one agency (John Clay & Company, No. 54), which sold 591,028 head of sheep with the use of two salesmen or an apparent average of 295,514 sheep per man.[12] These salesmen, however, were assisted by a sheep yardman in selling during peak periods (R. 459) for whose services in selling no allowance has been made in the Secretary's ascertainment of so-called reasonable cost. Moreover, as we have already pointed out, John Clay & Company would fail to earn out-of-pocket expenses under the rates prescribed by the Secretary's order. Other representative sheep firms with substantial volume and with the highest performance per salesman are Swift & Henry (Agency No. 59), Cassidy-Southwestern Commission Company (Agency No. 84) and W. M. Leitch Commission Company (Agency No. 44). The last named agency is engaged

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[8]FF. 115, R. 83-84; Govt. Ex. 115-B, R. Vol. IV, p. 134.
[9]FF. 143, R. 97.
[10]Govt. Ex. 115-B, R. Vol. IV, p. 134.
[11]FF. 143, R. 97.
[12]Govt. Ex. 115, p. 68, R. Vol. III, p. 37; Govt. Ex. 115-B, R. Vol. IV, p. 69; see tables, Appendices B and C.

exclusively in the sale of sheep, and at the Secretary's rates would earn $9,564.85, without allowance for return on the investment, or after such allowance, $8,495.29, or at the rate of $4,247.65 for each of its four owners for their services.[13] Of the other two, as we have already pointed out, Swift & Henry would barely make expenses at the Secretary's rates, although it has perhaps the best balanced business of any agency at the yards, ranking first in cattle sales, fifth in hog sales, and third in sheep sales. Cassidy-Southwestern Commission Company, likewise one of the first 10 in cattle sales, and fourth in sheep sales, would have left $4,543.81 for owners' compensation and return on investment and, after deduction of the Secretary's allowance for the latter ($1,698.88) $2,844.93 to compensate three owners for their own personal services, or at the rate of $948.31.[14]

While the Secretary's hypothetical performance was therefore more nearly reached on hogs and sheep than on cattle, it is obvious that the rates fixed are wholly inadequate, whether considered in relation to the agencies as a whole or those handling a substantial volume of business. The fact that one exclusive sheep agency may earn $4000 per owner for personal services, while none of the other leading sheep agencies having a large volume will earn anything, is certainly insufficient support either for the rates fixed or for the hypotheses upon which they are based.

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[13]Pet. Ex. 4, R. Vol. III, p. 6, cols. j, l, n.

[14]n. 13, *supra;* Govt. Ex. 115, pp. 65, 66, 67, 68, R. Vol. III, pp. 31-38.

POINT V.

THE ALLOWANCE FOR BUSINESS-GETTING AND MAINTAINING EXPENSE IS BASED UPON SPECULATION AND HYPOTHESIS, IS ARBITRARY AND CAPRICIOUS, AND IS NOT SUPPORTED BY EVIDENCE OR FINDING.

The order allows as reasonable unit costs for "business-getting and maintaining" an amount equal to 10% of the total costs and profits found by the order to be reasonable.[1] The amount of this allowance per head is as follows:[2]

Cattle and Calves	$ .0450
Hogs	.0180
Sheep	.0059

These allowances, when applied to the actual volume of business handled by the 61 market agencies in 1931,[3] give an aggregate figure for all species of $147,218.31.[4] On the other hand, the Government accountant Bachmann found that business-getting and maintaining expense amounted in 1931 to $283,756.40 excluding salary expense.[5] In this

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[1]FF. 148, R. 110.

[2]FF. 163, R. 122.

[3]Cattle and Calves, 2,489,772 head (Govt. Ex. 115, p. 4, R. Vol. III, p. 19); Hogs, 1,289,623 head (Govt. Ex. 115, p. 5, R. Vol. III, p. 20); Sheep 2,028,026 head (Govt. Ex. 115, p. 6, R. Vol. III, p. 22). These amounts include the business done by the two cooperative market agencies.

[4]Cattle and Calves, $112,039.74; Hogs, $23,213.21; Sheep, $11,965.35.

[5]Govt. Ex. 115, p. 24, R. Vol. III, p. 29. The allowance in the order for business-getting and maintaining does not purport to provide for salary expense, since salaries are not broken down in the order as they were in the accountant's study (FF. 115, R. 84; see pp. 34-35, *ante*). The accountant's figure of $283,756.40 for non-salary business-getting and maintaining expense rather than his figure of $471,953 for combined salary and non-salary business-getting and maintaining expense, is therefore comparable to the allowance.

item alone, therefore, the allowance made by the order is $136,538.09, or 48%, less than the actual 1931 costs as found by the Government accountant. This drastic reduction warrants special consideration of this particular item.

Although the section of the order purporting to set forth the bases for reducing the allowance for business-getting and maintaining contains a detailed statement of the actual cost per head for each species for each firm,[1] this section of the order does not state what elements enter into this item of cost. However, since the detailed per head costs there given are the same as those found in the Government's accountants' cost study for 1931, it is apparent that the Secretary's allowance for business-getting and maintaining is intended to amount to what the Secretary considers to be a "reasonable" allowance for the same elements that enter into the Government's accountants' figures. The Government's accountants' breakdown of business-getting and maintaining cost[2] reveals what these elements are and their amounts:

Advertising	$131,189.30
Travel	112,569.96
Operation of auto	10,550.17
Auto depreciation	4,629.75
Local and miscellaneous entertainment	3,103.58
Exchange soliciting and membership dues	21,713.64
Total	$283,756.40[3]

No further statistical breakdown of these amounts was given by the Government accountant or appears in the

[1] FF. 148; R. 104.

[2] Govt. Ex. 115, p. 24, R. Vol. III, p. 29.

[3] Each of these items excludes salaries, but purports to include all other items of cost.

record. However, the testimony of the Government accountant, Bachman, throws light upon the nature of these expenses and his reasons for including them under the heading "Business Getting and Maintaining." He testified that the amount for "advertising" includes "newspaper ads, circular letters, postage, specialties and novelties, signs of various kinds and other miscellaneous items. Under newspaper and magazines the figure incorporated in this total of advertising expenses is $13,611.31." [1] Since there is no evidence in the record that the expense for "specialties and novelties, signs of various kinds and other miscellaneous items" is of substantial amount, it is evident that the greater part of the so-called "advertising" expense is spent upon "circular letters" and postage which is used for circular letters.[1a] By "circular letters" the accountant apparently means what is more commonly called "market reports." The items of travel, auto operation, and auto depreciation, are shown by the accountant's testimony to have been included in business-getting and maintaining expense because they were incurred in the country trips which salesmen make to their customers.[2] The item of "Exchange soliciting and membership dues" is shown by the accountant's testimony to include all payments made by members of the Exchange,[3] other than payments for specific services by the Exchange to particular market agencies, and to have been included as business getting and maintaining expense on the ground that a part thereof is attributable to the Exchange's

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[1] R. 859.

[1a] See *e.g.*, R. 924.

[2] R. 862.

[3] The order contains a finding (FF. 99, R. 78) stating that the Exchange is a registered market agency and that "the reasonableness of its rates for services is not a subject of inquiry" in this proceeding. These costs were allowed in full in the *Tagg* case.

radio program of market information.[4] It appears, therefore, that 45% of actual business getting and maintaining expense relates to country trips, 8% relates to the Exchange, and the major part of the remaining 47% relates to market letters.

The above appears to exhaust the statistical material available to the Secretary in determining what constitutes a "reasonable" allowance for business getting and maintaining. However, the order shows upon its face that no use was made of this statistical material.

On the contrary, the Secretary, without evidence or evidentiary finding for its support, concludes that the total allowance for "business getting and maintaining expense" should be 10% of all other so-called reasonable cost. The basis upon which this overhead allowance was determined is not stated. It is on its face purely arbitrary.

The effect of this arbitrary overhead allowance of 10% is to cut the so-called reasonable cost of the several items

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[4]The witness stated with respect to this item: "That items cover the charge for the running expenses of the exchange, radio, the rate hearing, and possibly some other items. The proportion of that expense for radio and for the time of the secretary spent in broadcasting and getting his information together for broadcasting is, in my [fol. 1201] opinion, a proper business-getting and maintaining expense. Other parts of this amount may not be properly classified under that heading * * *" (R. 828). By "rate hearing" the witness meant the previous hearing in 1930 (R. 854).

The witness also stated: "I do not think that the Exchange solicits for any individual members and do not have any field men out soliciting business that I know of. The only activity of that kind that I know of would be the cost of the radio market reports and the cost of salaries and gathering information and making the broadcast. I would classify it under a broad definition of soliciting expense. I do not know whether I would classify the bulletin board in the lobby as soliciting expense" (R. 854).

He also stated that the item included assessments by the Exchange "for the transportation fund," (R. 862), *i.e.*, for funds used by the Exchange in taking measures to prevent railroad discrimination against the Kansas City market (R. 266, 704, 1067-1069).

making up the aggregate out-of-pocket expense for "business-getting and maintaining" to one-half of those actually incurred, without explanation as to expenses included or the extent to which those incurred in respect of any particular item are excessive. Nor is there either evidence or evidentiary finding upon which such eliminations or reductions can be predicated. The basis for this arbitrary cutting in two of the out-of-pocket expenses for the various purposes indicated rests solely in the inner consciousness of the Secretary, which we assume the Government will undertake to support by the contention that it represents his "informed judgment". But even a Cabinet Officer, acting in a rate-making capacity affecting the livelihood of citizens engaged in the performance of a useful public service, must have some factual foundation for his action, and his conclusions must be supported both by evidence and evidentiary findings, of which in this case there are neither.

A comparison of the amount allowed with the distribution of the expenses covered by this item as determined by the Government's own accountants, discloses some startling results of this supposed exercise of "informed judgment" by the Secretary.

As pointed out, the effect is to reduce the allowance by nearly one-half of the aggregate cost of this item of expense as a whole. The Government's accountants' own breakdown of the item as a whole into its component parts (p. 140, *ante*) discloses that approximately one-half is represented by so-called advertising expense, and the other half by the out-of-pocket costs of country trips, represented by travel, "operation of autos" and "auto depreciation." As pointed out in the statement, the expense of these country

contacts are not, primarily, incurred for the purpose of persuading shippers to send their live stock to a given agency, but for the purpose of advising growers as to the shipment and care of their cattle, and of becoming acquainted at first hand with the cattle, the conditions under which grown and fed, etc., all for the purpose of procuring for the grower a better price (Statement, pp. 21-23, *ante*). As also disclosed in the Statement, it is conceded that this service is of advantage to the grower, although performed at the expense of the agency, and it is not claimed that more of this service is performed than is desirable in the interest of the grower. On the contrary, the complaint, if any, is that too little of this service is furnished. As we have observed in the Statement, while these expenses, roughly approximating the entire amount of the Secretary's reduction, may in one sense be properly classified as a part of the cost of maintaining business, they are more properly a cost incident to intelligent and efficient selling, and should have been allowed in full. Had this been done the Secretary's arbitrary allowance of 10% of all other so-called reasonable costs for all "business getting and maintaining expense" would have left but $10,000 to cover advertising and maintenance of the Exchange. The actual expenses incurred for the first purpose aggregated $131,189.30, and for the second purpose $21,713.64. On the other hand, if the Secretary intended that his allowance should cover the expenses of advertising and exchange maintenance, it would leave nothing for the maintenance of these essential country contracts.

Moreover, as previously pointed out in the statement (p. 141, *ante*), the greater part of the so-called "advertising expense" is spent upon "market reports" and the postage thereon. These agency market reports do not du-

plicate official reports, but contain general market information, comments upon marketing problems, and information about particular matters of interest to particular growers, such, for example, as information about particular sales of cattle coming from the same neighborhood or of the same general kind and quality, one of the chief purposes of which is to enable the seller to form an opinion as to the worth of his own cattle and of the time when they should be shipped, concerning which advice is also given from time to time by the agency. While the furnishing of these reports, therefore, carries with it an element of advertising, they are sent out to customers of the agency primarily for the purpose of conveying to him such information as will be useful to him in timing his shipments so as to get the best price, and of affording him a reliable check on the prices he actually receives. In disregarding this as an allowable element of expense, as in setting up volume and speed of sales as the test of salesmanship performance, the Secretary has again completely ignored the interests of the grower and the purpose for which the expenditures actually incurred were made.[1]

Neither the evidence nor the evidentiary findings support the reduction to any degree of the expenses actually incurred and classified by the Government's accountant as the cost of "business-getting and maintaining," itself a misnomer. Certainly there is no factual foundation for cutting

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[1]The only portion of the business-getting and maintaining expense that can be considered purely advertising rather than a form of service mutually advantageous to agency and grower is that portion which can be attributed to newspaper advertising, specialities and novelties, signs of various kinds, local and miscellaneous expenses, the precise amount of which is not disclosed, but which in the aggregate is insignificant (see p. 141, *ante*).

this item in half, and the findings leave wholly to speculation the expenses intended to be included therein or, if all items of expense are to be included therein, the extent to which any are excessive.

The Secretary sagely remarks that the allowance of an "excessive expenditure" would be merely to charge the shipper "to have himself persuaded to send his live stock to one commission firm rather than to another."[5] But, as appears from the foregoing, persuasion of this character is not the primary occasion for these expenditures. Nor, to the extent that this element may enter, do either the evidence or the evidentiary findings disclose to what extent they are attributable to this cause and to what extent they are a part of the expenses incurred for the purpose of procuring for the grower a better price both through country contacts and the dissemination of useful information.

The 10% overhead allowance for the aggregation of items included under the functional cost now under review is therefore purely arbitrary. It rests solely in the *ipse dixit* of the Secretary without even the pretext of opinion evidence in its support. Apparently for the purpose of giving an appearance of verisimilitude to the allowance made, the Government's accountants' allocation of the cost per head for this aggregation of expenses for each firm and for each species of cattle is solemnly set out in the findings, but the Secretary's conclusion does not even pretend to be based upon these figures. As distinguished from the *Tagg Bros.* case in which the allowances were "a normal of the *actual* cost of the particular item in their business," the allowance is purely arbitrary, as any overhead allowance of a given percentage must be.

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[5]FF. 148, R. 110.

If the expenses making up this item were an insignificant part of the total, the arbitrary adoption of an overhead percentage might not constitute a material infirmity in the order. According to the actual costs as recognized by the Secretary himself, however, the reduction amounts to $136,538.09. The drastic reduction thus improperly made, therefore, not only affects the integrity of the Secretary's pseudo-determination of so-called reasonable cost, but its complete disregard of actual expenditures and the arbitrary basis upon which the allowance is predicated in themselves discloses the purely hypothetical and speculative character of his whole pretended cost determination and of the rates prescribed.

Moreover, there is no reason whatsoever to suppose that the reduction in rates ordered by the Secretary will result in fact in the elimination of one cent of actual expenditure for business-getting and maintaining.

If this order goes into effect, there will be a number of market agencies, including the cooperative associations who have been advised and encouraged in these very business-getting and maintaining activities by the Secretary (Dept. of Agriculture' Technical Bulletin No. 57, Res. Ex. 18), still doing business at the Kansas City stockyards, even after those driven out of business by the lower rates are eliminated. Each of these market agencies will still individually need customers in order to stay in business and if, in 1931, it was, from the standpoint of prudent management, sound business practice to engage in business-getting efforts, it will continue to be sound business practice to engage in business-getting efforts. Whether or not the reduced revenue of the market agencies will be reflected in a reduced expense for business-getting and

maintaining will depend upon the business judgment of each of the individual firms remaining in business. There is every reason to suppose that those firms, faced with the necessity of cutting costs in some way, will cut them in a way that will reduce the efficiency of their service to the producer, rather than cut them in a way which will result in their having no customers.

POINT VI.

THE ALLOWANCES AND FINDINGS FOR YARDING AND OFFICE SALARY COSTS ARE INVALID BECAUSE BASED UPON ARBITRARY, UNSOUND AND CAPRICIOUS FUNCTIONAL COST ALLOCATIONS.

1. The functional cost tables upon which the allowances purport to be based are wholly at variance with the costs as ascertained and reported by the Government accountants.

As has been stated the Secretary's ultimate findings of "reasonable costs" include allowances for yarding and office salary costs.[1] Such allowances are in recess of the Government's accountants' costs for the same functions by an aggregate of $81,638.97 in respect of yarding salaries and $20,088.35 in respect of office salaries.[2]

The answer of defendants referring to the separation or allocation of costs into functional accounts states (R. 142):

> "* * * defendants say that the business of petitioner market agencies naturally divides itself into such functional divisions; that such divisions were followed by the accountant who testified for petitioner market agencies; and that such functional division for the purpose of determining costs is not affected by the fact that the same men commonly perform several different functions. Defendants further say that such separation of costs into functional costs is not arbitrary and that it does not vary from the facts of the business of petitioner market agencies."

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[1]FF. 163, R. 121-122.
[2]Pet. Ex. 7, R. Vol. III, p. 9.

The cost tables in the order constitute the Secretary's evidentiary fact findings and purport to have been used in the determination of normal or "reasonable costs". They consist of figures set out in tabular form purporting to be estimates of actual cost for yarding and office salaries for individual firms (FF. 144, 146, R. 98, 100).

The following comparisons of these tables conclusively establish the absence of any probative relation between the figures comprising these findings and the Government's accountants' cost estimates for these items. We insert only the comparison as to yarding salaries with respect to cattle and calves. Similar tables of comparisons made with respect to other species and with respect to office salaries for all species show a divergence between the cost tables appearing in the order and the Government's accountants' figures equal in percentage and relative degrees of divergence between agencies to the comparisons made in respect of cattle and calves set out as follows:

YARDING SALARIES

Cattle and Calves

Firm No.	Government[3] Accountant's Salary Cost per Head (Gov't Ex. 115)	Salary Cost per Head as Set up by Order (F. 144, R. 98)	% of Divergence, Secretary's from Gov't Accountant's Figures
66	$.0451	$.0064	86%
34	.0694	.0129	81
67	.2814	.0140	95
79	.1155	.0278	76
83	.0544	.0279	49
15	.1200	.0311	74
9	.0388	.0388	—
87	.0395	.0395	—

[3]Govt. Ex. 115, p. 7, R. Vol. III, p. 23.

Firm No.	Government Accountant's Salary Cost per Head	Salary Cost per Head as Set up by Order	% of Divergence, Secretary's from Gov't Accountant's Figures
35	.1238	.0400	68
30	.0935	.0425	55
54	.0695	.0481	31
61	.1027	.0489	52
37	.1105	.0490	56
53	.1019	.0496	51
70	.1200	.0517	57
73	.0901	.0531	41
56	.1085	.0535	51
42	.0803	.0565	30
60	.1149	.0584	49
46	.0735	.0619	16
74	.1088	.0621	43
52	.0820	.0642	22
18	.1044	.0650	38
48	.1152	.0665	42
62	.0872	.0666	24
55	.1086	.0676	38
23	.0801	.0682	15
33	.1814	.0695	62
16	.0919	.0699	24
14	.1458	.0706	52
12	.0774	.0711	8
26	.1173	.0719	39
65	.0964	.0720	25
63	.0844	.0721	14
75	.1467	.0746	49
10	.0766	.0781	2*
59	.0870	.0784	10
20	.1113	.0811	27
71	.1127	.0818	27

*Indicates Secretary's cost per head larger than that of Government's accountant.

Firm No.	Government Accountant's Salary Cost per Head	Salary Cost per Head as Set forth in Order	% of Divergence, Secretary's from Gov't Accountant's Figures
6	.0863	.0830	4
25	.1099	.0840	24
51	.1158	.0849	27
29	.1470	.0880	40
4	.0952	.0895	6
82	.1248	.1015	19
36	.1023	.1023	—
84	.1096	.1044	5
19	.1518	.1112	27
78	.1120	.1139	2*
72	.1681	.1206	28
77	.1497	.1230	18
13	.1276	.1285	1*
7	.1440	.1353	6
17	.1252	.1399	10*
76	.1791	.1635	8
11	.2130	.2130	—

2. These functional cost tables upon which the Secretary's allowances purport to be based are not supported by other cost evidence in the record, but are figures unrelated to any true functional cost allocation.

In addition to the Government's accountants' cost estimates, the record contains appellants' cost estimates and cost information elicited by a questionnaire[1] issued by the Government. There is no correspondence whatsoever between the Secretary's evidentiary findings, the appellants' functional cost tables (Pet. Ex. 7) or the cost tables pre-

*Indicates Secretary's cost per head larger than that of Government's accountant.

[1]Govt. Ex. 115-B, R. Vol. IV.

pared and offered in evidence by the Government's Accountants Bachmann and Burns (Govt. Ex. 115). The statement preceding and introducing the cost tables in the order would lead the reader to assume that they are the costs found to exist in the Government accounts.[2] The percentages of divergence above set forth do not fully depict the actual differences. It will be seen by a comparison of the unit cost of yarding salaries in respect of cattle that the Government's Accountants' cost in the case of Firm No. 67 is $.2814 while the Order gives the same cost as .014. The Government's Accountants' cost figure is more than twenty-five times the figure for the same item given by the Order. It is evident that a drastic recalculation has occurred. Both figures cannot be correct. There is to be observed from this table the extent to which different methods of cost allocation can vary the results—and it is these evidentiary findings which the Secretary purports to use to inform his judgment. No findings in the order explain the processes employed. No definitive statement appears challenging the accuracy of the accountants' cost allocations. The statement contained in the order that salesmanship costs are not distributed to functional accounts neither corresponds to the averment contained in defendants' answer nor is it supported by analysis of the substituted cost tables set out in the order.

In Finding 115 (R. 83, 84) appears a statement directly at variance with the averment above quoted from the answer of defendants filed herein:

> "Therefore, in the distribution of costs hereinafter made to functional accounts, the services of a salesman, for instance, are not divided as between selling, yarding, office work and business getting

[2]FF. 144, 146, R. 98, 100.

> and maintaining, but are considered as being covered by the reasonable allowances for salesmanship. The same is true in principle with respect to the salaries of other workers such as yardmen and those who are engaged in the office."

It is manifestly impossible to reconcile on this score the answer with the order. Varying percentages of the total yard work were performed by salesmen of the various agencies. And the same situation prevailed with respect to other workers and other functions. Therefore, the effect of the reworking of these cost tables in the degrees indicated was to render such costs non-representative of the actuality of the respective situations in the different agencies and not only arbitrary but absolutely misleading and deceptive when utilized for comparison with functional costs of other agencies purporting to be applicable to the same function.

The methods used are unexplained. Appellants have been unable even upon the assumption that the propriety of the functional division of costs was destroyed by the elimination of all yarding or office salary expense for salesmen to justify or recognize most of the cost figures appearing in the tables set up in the order. The conclusion is inescapable that many of the figures appearing in these tables arise as a result of the incorporation of unlike ingredients of expense and have been so arranged as to produce a predetermined result to justify the Secretary's ultimate finding expressed in the form of "a reasonable cost" as the mean or norm of these evidentiary findings.

3. Such manipulation of the cost evidence presents a false impression of functional cost variations between individual agencies.

The tables set out above tend to establish that some of the evidentiary fact findings for yarding and office salary costs set up in the order are arrived at by the process of dividing the total of all salary cost items for employees exclusive of salesmen and owners for each firm by the total number of head handled by the particular firm. Of course, such costs are functionally non-representative as to the actual situation in respect of the particular agency if salesmen or owners performed a portion of the yarding as the order finds to have been the case in many but not all instances (F. F. 115, R. 83, 84). Certain unaccountable adjustments have been made in these cost tables unexplainable by appellants because unrevealed by any statement contained in the order or explanation in any evidence either at the hearings before the Secretary or before the court below.[1]

[1]It should be noted that from the very outset of the proceeding before the Secretary the procedure followed served arbitrarily to increase variations in the functional unit costs between agencies. As the Government accountant testified no automobile expense was included in respect of 35 agencies (because unbooked) although included in respect of all the other agencies (R. 822). In the case of 8 agencies no compensation whatsoever was included in the costs for the services of owners actually rendering services during the test year. Such cost was included on the "booked basis" in respect of other agencies (R. 820, 822). More than 60% of the costs considered by the Government accountants was distributed among the species on a judgment basis. As to certain functions one ratio was employed and for unexplainable reasons in other functions a totally different ratio was employed. This situation caused both the Chief Government Accountant (Bachmann) and the Assistant Government Accountant (Burns) to admit on the stand not only lack of

The evidentiary findings expressed by these cost tables in the order constitute the material used to inform the Secretary's judgment as to reasonable cost. Manifestly they are not "normals" of the "actual cost of the particular item" such as are referred to in the *Tagg* case.[1] A judgment so arrived at and predicated upon an unexplained factual background cannot be otherwise than a capricious exercise of authority.

No other evidence in the record lends any support to the Secretary's ultimate findings as to office and yarding salaries. It is a familiar and long-established principle that the want of record evidence to support the order of an administrative body acting in a *quasi* judicial capacity cannot be supplied by evidence extraneous to the record and not presented to the scrutiny of the interested parties. *Interstate Commerce Commission* v. *Louisville & Nashville Railroad*, 227 U. S. 88, 93; *Crowell* v. *Benson*, 285 U. S. 22, 48.

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substantiation for the allocations made (R. 867) but a resultant "lack of uniformity in the results produced" (R. 822). The variations so artificially produced augmented the inevitable cost divergencies in respect of different firms arising from disparity in average size of consignments (Govt. Ex. 114A); of selling value per head in the same classification of the same species; in the income per head arising under the same tariff (R. 865); in the proximity in relative location of selling pens to unloading chutes and scales; in the proportion of buying volume to total volume handled. All these factors caused of necessity very great divergencies in unit costs and when these costs were further distorted in the process of formulation the original errors were greatly magnified.

[1]FF. 14, R. 32 of Tagg Record, No. 45, Oct. Term, 1929.

4. The supposed cost tables comprising the Secretary's evidentiary findings being the whole of the evidence supporting the ultimate findings, and being themselves incompetent, the ultimate findings are void.

The ultimate findings of the Secretary as to reasonable costs for yarding and office salaries are not supported by any evidence other than the Secretary's evidentiary findings. It has been shown that the evidentiary findings are themselves no more than arbitrary and unsupported figures, completely without probative value. It is submitted that it is not open to the court to search the record for possible justifications of the Secretary's ultimate findings or his order. As it was said by Mr. Justice Miller in *United States* v. *Clark*, 96 U. S. 37, 40:

> "* * * when that court has presented, as part of their findings, what they show to be all the testimony on which they base one of the essential, ultimate facts, which they have also found, and on which their judgment rests, we must, if that testimony is not competent evidence of that fact, reverse the judgment for that reason. For here is, in the very findings of the court, made to support its judgment, the evidence that in law that judgment is wrong. And this not on the weight or balance of testimony, nor on any partial view of whether a particular piece of testimony is admissible, but whether, upon the whole of the testimony as presented by the court itself, there is any evidence to support its verdict; that is, its finding of the ultimate fact in question."

POINT VII.

THE ADMINISTRATIVE PROCEEDINGS WERE IRREGULAR, NOT IN CONFORMITY WITH THE STATUTE, AND DENIED APPELLANTS DUE PROCESS.

Considered in its entirety, the procedure followed in the Department of Agriculture in the administrative hearings in determination of this proceeding was irregular, manifestly unfair, and violative of due process. The actual taking of testimony was conducted before an examiner. Appellants specifically requested that the practice followed in the Interstate Commerce Commission be pursued, under which the examiner would make a tentative report, the appellants would be entitled to present exceptions, and the matter might then be argued before the Secretary. This request was denied; no tentative report was at any time filed by the examiner; and no argument upon the evidence taken before the examiner was ever held before the Secretary (R. 4-5).

Following the taking of the evidence before the Examiner at the first hearing, oral argument was had before "Acting" Secretary of Agriculture R. W. Dunlap (R. 28, 5); and following the taking of the evidence before the Examiner at the second hearing, oral argument on the basis of the record made at both hearings was had before "Acting" Secretary of Agriculture Rexford G. Tugwell, and appellants filed a brief in connection therewith (R. 33, 5).

In their petitions in the court below the appellants alleged that at the time of these hearings before Mr. Tugwell and Mr. Dunlap, respectively, the Secretary himself was at his desk in Washington, neither sick, absent nor disabled, and that under these circumstances neither Mr. Dunlap nor Mr. Tugwell could, under the applicable stat-

ute,[1] perform the functions of Acting Secretary either in respect of according the appellants the full hearing required by Section 310 of the Act or of exercising the authority given by that section to the Secretary to prescribe rates. Although the appellants were, on authority,[2] entitled to prove the facts alleged by them as making Mr. Dunlap and Mr. Tugwell, respectively, incompetent to perform the functions of Acting Secretary of Agriculture, the court below, without opinion or statement of any reason, struck this allegation from the petitions, to which appellants duly excepted and in respect to which they have preserved assignments of error (R. 137, 175-176).

The rate order itself is signed by the Secretary of Agriculture in person (R. 130); but in the court below the appellants alleged in their petitions, on information and belief, that, at the time he signed it, the Secretary had not personally heard or read any of the evidence presented at any hearing in connection with this proceeding, had not heard or considered any oral arguments made, or read or considered any briefs submitted by the appellants, and that the sole information upon which he acted was derived from consultation with employees of the Department out of the presence of appellants or any representative of appellants (R. 5). These allegations were stricken from the petitions by the court below, which stated, without citation of authority, that to accept the theory upon which these allegations were made by the appellants would make the statute incap-

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[1]"In case of the death, resignation, absence, or sickness of the head of a department, the first or sole assistant thereof shall, unless otherwise directed by the President, as provided by section 6 of this title, perform the duties of such head until a successor is appointed, or such absence or sickness shall cease." (Act of July 23, 1868, as amended, 5 U. S. C. A., Sec. 4).

[2]*Ex parte Tsuie Shee*, 218 Fed. 256, 257.

able of practical administration (R. 148). The allegations referred to were therefore disposed of below on the ground that they were immaterial and not upon the ground that they were untrue, and, accordingly, for present purposes, their truth must be assumed just as though they had been disposed of below on demurrer.

The net result of this chain of procedure is this. We have a statute which in express terms requires that the appellants be accorded "full hearing" and which authorizes the Secretary, and no one else, to make a rate order (Sec. 310). We have a general statute which authorizes the First Assistant Secretary to perform the duties imposed upon the Secretary only in case of the death, absence or incapacity of the Secretary himself. In performing his duties under the statute in this case, the Secretary has had the evidence taken by examiners and has never himself heard or read any portion thereof. Whatever report on that evidence was made to him by his examiner was never made public or in any way disclosed to the appellants, although they specifically so requested. Following the taking of the evidence, the oral argument upon that evidence was heard not by the Secretary, but by Assistant Secretaries purporting to be "Acting" Secretaries, but, on the facts alleged in the petitions and which must be taken as having been admitted for purposes of appeal, not competent to act in that regard. Whatever report these functionaries made to the Secretary was never at any time disclosed to the appellants or to any one representing them.

Having in this manner acquired information—the accuracy, scope and completeness of which is undisclosed—the Secretary in person signed the order complained of.

The rule that findings of the Secretary under the present statute, as of administrative bodies generally, in re-

spect of ordinary facts are conclusive upon the Court if supported by "legally sufficient" evidence (*Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 444) is based not alone upon the fact that the administrative body may be regarded as a "tribunal appointed by law and informed by experience", whose judgment in respect of the particular subject matter is entitled to great weight, but also upon the requirement that there shall be no irregularity in the administrative proceedings, that they shall be conducted after full and fair hearing with adequate opportunity for the presentation of evidence either to establish or to negative the existence of facts. This requirement of full hearing, although expressly provided for in the present statute (Sec. 310), is a constitutional prerequisite to the validity of administrative orders in the quasi-judicial field here involved (*Southern Railway* v. *Virginia,* 290 U. S. 190).

Aside from recitals in the order itself—a document whose authorship is undisclosed in the record and unknown to appellants—there is no disclosure whatever by this record as to what information the responsible official charged with the rate-making duty acted upon in making the order in question. Obviously, he cannot have prepared the order himself for that order frequently recites that particular findings are made upon the basis of information contained in the record as a whole, a function which cannot have been performed by the Secretary in view of what must be regarded as the admitted allegations of the petitions of these appellants in the court below that the Secretary had never read, heard or considered the record or any part of it.

While the precise facts in respect to the present procedure appear to be unprecedented, the principle is not new. With respect to the required administrative procedure under the Interstate Commerce Act, which, as we have shown, is

in *pari materia* with the present act (p. 84, *ante*), this Court has thus answered the contention that the administrative order might be supported by facts in the Commission's files or otherwise known to it but not made of record and subjected to scrutiny and contest:

> "But the statute gave the right to a full hearing, and that conferred the privilege of introducing testimony, *and at the same time imposed the duty of deciding in accordance with the facts proved.* A finding without evidence is arbitrary and baseless. And if the Government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our Government. It would mean that where rights depended upon facts, the Commission could disregard all rules of evidence, and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another; is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.
>
> "In the comparatively few cases in which such questions have arisen it has been distinctly recognized that administrative orders, quasi-judicial in character, are void if a hearing was denied; if that granted was inadequate or manifestly unfair; if the finding was contrary to the 'indisputable character of the evidence.'" [Emphasis ours.]
>
> *Interstate Commerce Commission* v. *Louisville & Nashville R. Co.*, 227 U. S. 88, 91.

The appellants' point is no mere technicality. They do not question the right or the practical necessity in the administration of statutes that the responsible head of the Depart-

ment shall have the full assistance of his subordinates in gathering evidence and in performing whatever other functions may assist him in reaching his conclusions. But under the doctrine of the *Louisville & Nashville* case, *supra*—a doctrine repeated in *Crowell* v. *Benson*, 285 U. S. 22, 56-57—any evidence gathered by his subordinates upon which the Secretary in any way bases his conclusion must be spread of record and subjected to scrutiny and to contest by the appellants. That has not been done in this case, for, on the uncontroverted allegations of the petitions, the Secretary decided this case not on the basis of the record and not on the basis of the evidence, not on the basis of the briefs or the argument—for he never heard, read or considered any of them—but upon the basis of reports made to the Secretary by his subordinates out of the presence of the appellants. What evidence was thus presented to the Secretary is unknown and, under the doctrine of the *Louisville & Nashville* case and *Crowell* v. *Benson*, cannot support the order.

This is not a case where the Secretary has attempted to redelegate to his assistant the duty of deciding the whole controversy and performing his rate-making function under the statute. If it were such a case, the question would be as to the power to delegate, and as to the regularity of the appointment of the assistant and of the existence of the facts conditioning his status as Acting Secretary. Here, however, the Secretary purports himself to exercise the rate-making function. The statute imposed upon him the duty of exercising that function "in accordance with the facts proved" (*Illinois Central* case, *supra*). Yet, the Government and the court below have regarded as immaterial the considered allegations of the appellants that the

Secretary did not make that decision in accordance with the facts proved; that, on the contrary, he at no time heard, read or considered the facts proved; but that he made that decision upon the basis of reports to him by his subordinates; of the nature, character and scope of which the appellants were uninformed at the time and remain uninformed.

Neither the length of the administrative proceedings, the volume of the testimony adduced thereat, nor the length nor complexity of the report which bears the Secretary's signature, can alter the essential basic fact that the petitions in equity in this case allege—and that is not denied, but, on the contrary, is treated as immaterial—that the responsible official charged with the duty of making just and reasonable rates and who, in fact, purports to exercise that function by the order under review, at no time heard or read any of the evidence whatever, at no time heard or considered any argument whatever, and at no time read or considered any brief submitted by any of these appellants. If this is consistent with the statutory and constitutional requirements for administrative action of a quasi-judicial character, then there is no purpose to be served in any longer requiring a hearing at all, for if the Secretary may act solely upon the basis of secret reports from his subordinates, those reports could just as well be compiled from a secret interdepartmental investigation as from the result of a public hearing.

The administrative procedure followed in these cases, despite the large record and the lengthy "findings," has in fact resulted, for the reasons stated, in the making of an order at the arbitrary will of one man. The language of this Court in its recent opinion in *Jones* v. *Securities and Exchange Commission* (decided April 6, 1936, p. 12), is in point:

"The action of the commission finds no support in right principle or in law. It is wholly unreasonable and arbitrary. It violates the cardinal precept upon which the constitutional safeguards of personal liberty ultimately rest—that this shall be a government of laws, because to the precise extent that the mere will of an official or an official body is permitted to take the place of allowable official discretion or to supplant the standing law as a rule of human conduct, the government ceases to be one of laws and becomes an autocracy. * * *

"Arbitrary power and the rule of the Constitution cannot both exist.* * * if the various administrative bureaus and commissions, necessarily called and being called into existence by the increasing complexities of our modern business and political affairs, are permitted gradually to extend their powers by encroachments—even petty encroachments—upon the fundamental rights, privileges and immunities of the people, we shall in the end, while avoiding the fatal consequences of a supreme autocracy, become submerged by a multitude of minor invasions of personal rights, less destructive but no less violative of constitutional guaranties."

CONCLUSION

It is submitted that the decree dismissing the bills of your petitioners should be reversed, and that the causes should be remanded to the court below with directions to grant the relief as prayed in the bills.

Respectfully submitted,

FREDERICK H. WOOD,
JOHN B. GAGE,
Counsel for Appellants.

APPENDIX A

1. Affidavits on behalf of certain petitioners herein, no longer conducting business, filed with the Clerk of this Court.

The affidavit of Fred O. Morgan on behalf of the petitioner, Fred O. Morgan Livestock Commission Company, is as follows:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 686

FRED O. MORGAN, doing business as FRED O. MORGAN SHEEP COMMISSION COMPANY, *et al*,

Appellants,

vs.

THE UNITED STATES OF AMERICA and the SECRETARY OF AGRICULTURE,

Appellees.

(APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.)

AFFIDAVIT

UNITED STATES OF AMERICA
STATE OF MISSOURI } ss.:
COUNTY OF JACKSON }

FRED O. MORGAN, of lawful age, being authorized to make this affidavit on behalf of the petitioner herein named,

and being first duly sworn, on his oath states that Fred O. Morgan Sheep Commission Company, which was registered and did business at the Kansas City Stock Yards, Kansas City, Missouri, as a livestock market agency, was one of the petitioners which, in Case No. 2328 and related cases, in equity, brought suit in the United States District Court for the Western Division of the Western District of Missouri, and which cases are now pending on appeal to the Supreme Court of the United States to enjoin an order of the Secretary of Agriculture of the United States dated June 14, 1933, prescribing rates to be charged for services rendered by livestock market agencies operating at said market; that pursuant to the orders of said District Court in said cases pending the determination of said cases by said District Court and on appeal to said Supreme Court, said petitioners were required to deposit with the Clerk of said District Court a sum of money representing the difference between the charges made by petitioners for their services as market agencies under the then existing rates and the rates as prescribed by said Secretary in said order of June 14, 1933; that this petitioner made deposits with said Clerk pursuant to said order until this petitioner discontinued business as a market agency on the 1st day of February, 1935; that this petitioner discontinued business because it was unable to continue business under the rates as prescribed by said Secretary in said order.

FRED O. MORGAN

Subscribed and sworn to before me this 23rd day of March, 1936. My commission expires June 4, 1938.

MILDRED A. JONES,
Notary Public Jackson County, Mo.

[NOTARIAL SEAL]

The following affidavits on behalf of five other petitioners herein are identical with the affidavit of Fred O. Morgan, reproduced in full above, except as to the date of discontinuing business:

Affidavit of Henry F. Carnes on behalf of the petitioner, Henry F. Carnes Live Stock Commission Company, which is stated to have discontinued business on January 3, 1936;

Affidavit of Ben L. Welch on behalf of the petitioner, Welch Commission Company, which is stated to have discontinued business on January 10, 1936;

Affidavit of Walter G. Land on behalf of the petitioner, Walter G. Land Live Stock Commission Company, which is stated to have discontinued business on January 1, 1935;

Affidavit of E. W. Haux on behalf of the petitioner, Drumm-Standish Commission Company, which is stated to have discontinued business on March 13, 1936;

Affidavit of Heinie Klecker on behalf of the petitioner, Heinie Klecker Sheep Commission Company, which is stated to have discontinued business on May 1, 1935.

The affidavit of Jay D. McCormick on behalf of the petitioner, Jay D. McCormick Live Stock Commission Company, is as follows:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 686

FRED O. MORGAN, doing business as FRED O. MORGAN SHEEP COMMISSION COMPANY, *et al.*,

Appellants,

vs.

THE UNITED STATES OF AMERICA and the SECRETARY OF AGRICULTURE,

Appellees.

(APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.)

AFFIDAVIT

UNITED STATES OF AMERICA
STATE OF MISSOURI } ss.:
COUNTY OF JACKSON }

JAY D. MCCORMICK, of lawful age, being authorized to make this affidavit on behalf of the petitioner herein named, and being first duly sworn, on his oath states that Jay D. McCormick Live Stock Commission Company, which was registered and did business at the Kansas City Stock Yards, Kansas City, Missouri, as a livestock market agency, was

one of the petitioners which, in Case No. 2328 and related cases, in equity, brought suit in the United States District Court for the Western Division of the Western District of Missouri, and which cases are now pending on appeal to the Supreme Court of the United States to enjoin an order of the Secretary of Agriculture of the United States dated June 14, 1933, prescribing rates to be charged for services rendered by livestock market agencies operating at said market; that pursuant to the orders of said District Court in said cases pending the determination of said cases by said District Court and on appeal to said Supreme Court, said petitioners were required to deposit with the Clerk of said District Court a sum of money representing the difference between the charges made by petitioners for their services as market agencies under the then existing rates and the rates as prescribed by said Secretary in said order of June 14, 1933; that this petitioner made deposits with said Clerk pursuant to said order until this petitioner discontinued business as a market agency on the 24th day of January, 1936; that this petitioner claims an interest in and to the deposit aforesaid adverse to that of any and all other persons and that petitioner, if he had had available the funds aforesaid as of the 24th day of January, 1935 and the said order had not been in effect and required the impounding of said money, petitioner would not have had to discontinue business on said date but would have remained in business as a market agency.

JAY D. MCCORMICK,

Subscribed and sworn to before me this 25th day of March, 1936.

MILDRED A. JONES,
Notary Public, Jackson County, Missouri.

My Commission expires June 4, 1936.

[NOTARIAL SEAL]

The affidavit of J. Less White on behalf of the petitioner, J. Less White Commission Company, is identical with the affidavit of Jay D. McCormick, reproduced above, except that the J. Less White Commission Company is stated to have discontinued business on January 1, 1936.

The affidavit of Link Fasken is as follows:

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 686

FRED O. MORGAN, doing business as FRED O. MORGAN SHEEP COMMISSION COMPANY, *et al.*,

Appellants,

vs.

THE UNITED STATES OF AMERICA and the SECRETARY OF AGRICULTURE,

Appellees.

(APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI)

AFFIDAVIT

UNITED STATES OF AMERICA
STATE OF MISSOURI } ss.:
COUNTY OF JACKSON }

LINK FASKEN, of lawful age, being first duly sworn on his oath states that he has been registered and in busi-

ness at the Kansas City Stock Yards and a livestock market agency operating such business under the name and style of Link Fasken Livestock Com. Co.; that affiant is one of the petitioners which in case No. 2328 and related cases in equity brought individual action in the United States District Court in the Western Division of the Western District of Missouri and which cases are now pending on appeal in the Supreme Court of the United States to enjoin an order of the Secretary of Agriculture of the United States. This affiant further states that upon and after the order of the Secretary of Agriculture under date of June 14, 1933, which said order is the order affixing rates and charges complained of in said action, this petitioner did enter into an arrangement with the National Live Stock Commission Company, a market agency under which said National Live Stock Commission Company has received consignments of livestock shipped to the petitioner for sale as such market agency and has collected the commissions thereon, making all deposits in the name of said Company with the Clerk of said Court with respect to all of such consignments of livestock; that such arrangement has continued and is in effect as of this date; that all said deposits have been duly and properly made in respect to all livestock so consigned to the petitioner pursuant to and in accordance with the order of the District Court in the premises. The petitioner has been in the livestock commission business at the Kansas City Stockyards for 30 years, has become partly incapacitated as a result of defective eyesight; that the volume of business of your petitioner and the effect of the lowered rates and charges prescribed in the Secretary's order, together with the necessity of impounding the difference between the rates and charges in effect and those prescribed by the Secretary has made it necessary for the affiant to handle his business in the manner in this affidavit heretofore prescribed; that petitioner still retains an interest in the outcome of said case as filed by him as peti-

tioner and the issues therein are not moot as between the defendants and this affiant as petitioner and plaintiff.

LINK FASKEN

Subscribed and sworn to before me this 25th day of March, 1936.

MILDRED A. JONES
Notary Public, Jackson County, Missouri

My commission expires June 4, 1938.

[NOTARIAL SEAL]

2. Affidavit of A. L. Arnold, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri.

UNITED STATES OF AMERICA, SCT.

I, A. L. ARNOLD, Clerk of the District Court of the United States, for the Western Division of the Western District of Missouri, do hereby certify that the following tabulation contains a true and correct list of the names of the various petitioners in F. O. Morgan, doing business as F. O. Morgan Sheep Commission Company, *et al*, plaintiffs, v. United States of America and Secretary of Agriculture, defendants, In Equity No. 2328 and related cases Nos. 2329-2378, inclusive, who have discontinued making the deposits of money with the Clerk of this Court which were required under orders of this Court in these cases, together with the respective dates of last deposit by such respective petitioners and the total amount deposited with the Clerk of this Court by such respective petitioners:

Name of Petitioner	Date of Last Deposit	Total Deposits Made
Fred O. Morgan, doing business as Fred O. Morgan Sheep Commission Co.	Jan. 29, 1935	$ 117.56
H. H. Klecker, doing business as Heinie Klecker Sheep Commission Co.	Feb. 12, 1935	926.20
Henry F. Carnes, doing busines as The Henry F. Carnes Livestock Commission Company	Jan. 7, 1936	477.00
Drumm-Standish Commission Company, a Corporation	Mch. 9, 1936	2,843.30
Link Fasken, doing business as Link Fasken Livestock Commission Co.	No deposits made	
Harry J. Kennaley, doing business as The Kennaley Commission Company	Feb. 8, 1935	3,064.70
Jay D. McCormick, doing business as Jay D. McCormick Livestock Com. Co.	Jan. 28, 1936	889.84
Ben L. Welch, doing business as Welch Livestock Commission Co.	Jan. 7, 1936	511.48
W. E. Curtis, doing business as W. E. Curtis & Co.	May 15, 1934	828.80
Walter G. Land and John E. Maze, Partners doing business as Walter G. Land Livestock Commission Co.	Jan. 2, 1935	756.78
Less White, doing business as Less White Livestock Commission Co.	Dec. 31, 1935	1,917.71

WITNESS MY HAND as Clerk and the Seal of this Court. Done in my office at Kansas City, Missouri, this 23rd day of March, A. D. 1936.

A. L. ARNOLD, CLERK OF THE UNITED STATES DISTRICT COURT.

By H. C. SPAULDING, DEPUTY CLERK.

[SEAL]

APPENDIX B

SCHEDULE INDICATING AVERAGE PERFORMANCE PER SALES

This Schedule is compiled from Government Exhibits 115 (Cost Study) and 115-B (Questionnaire) and shows the average performance per salesma more than 25,000 head of cattle during the year. It also includes all agencies which did any substantial business in hogs or sheep. It appears from the schedu thetical performance of 29,000 head per year for cattle and 85,000 head per year for hogs considered reasonable by the order.

(NOTE: In computing total number of employed salesmen, if an extra salesman worked for three months, he is counted as 3/12 of a salesman; if for For tabulation of extra employed salesmen, see "ANALYSIS OF GOVERNMENT'S EXHIBIT 115-B" tabulation.)

Firm No.	NAME OF FIRM	CATTLE							
		SELLING					BUYING		
		Number of Cattle (Govt. Ex. 115, p. 65, R. Vol.III p. 31)	Number of Calves (Govt. Ex. 115, p. 66, R. Vol. III, p. 33)	Total Head	Number of Salesmen[10] (Govt. Ex. 115-B, R. Vol. IV)	Head per Salesman	Number of Cattle (Govt. Ex. 115, p. 65, R. Vol. III, p. 31)	Number of Calves (Govt. Ex. 115, p. 66, R. Vol. III, p. 33	Total H
59	Swift & Henry Livestock Commission Co.[1]	119,054	19,079	138,133	7	19,733	25,715	1,012	26,72
54	John Clay and Company	106,285	11,060	117,345	4 11/12	23,866	62,131	5,836	67,96
46	National Livestock Commission Company	88,553	10,560	99,113	6	16,519	58,231	88	58,31
82	Wilson, Egan & Company	78,523	12,159	90,682	6	15,114	17,242	2,525	19,76
63	Martin, Blomquist & Lee Commission Co.[4]	81,326	8,445	89,771	5	17,954	37,065	2,052	39,11
10	Producers Commission Association[5]	70,071	10,792	80,863	4 3/12	19,026	37,636	1,015	38,65
36	Farmers Union Livestock Commission Co	61,997	12,367	74,364	4	18,591	11,662	25	11,68
73	Witherspoon Livestock Commission Co	65,824	7,394	73,218	5	14,644	5,418	376	5,79
84	Cassidy Southwestern Commission Company	56,269	5,974	62,243	4	15,561	5,105	261	5,36
42	Long-Perry Livestock Commission Company	49,548	9,793	59,341	3	19,780	6,847	1,304	8,15
12	Bowles Commission Company	49,973	9,243	59,216	3	19,738	6,286	2,445	8,73
35	Drumm-Standish Livestock Commission Co	51,847	4,151	55,998	6	9,333	4,964	696	5,66
13	Crider Commission Company	44,870	10,492	55,362	3 11/12	14,135	8,505	78	8,58
71	Ryan-Robinson Commission Company	50,388	3,552	53,940	5 3/12	10,274	7,820	278	8,09
55	Wright & Baucus	39,631	7,999	47,630	3 5/12	13,940	12,223	1,260	13,48
18	Haggart-Wilson Livestock Commission Co	42,901	3,854	46,755	3 8/12	12,751	11,498	854	12,35
83	Burlington Livestock Commission Co	42,108	3,691	45,799	3	15,266	75,013	1,295	76,30
25	Stuart Gillespie & Company	37,769	4,276	42,045	3 9/12	11,212	9,709	1,558	10,26
48	Poole-Dempsey-Rutherford L. S. Comm. Co	32,417	3,959	36,376	3	12,125	5,728	255	5,98
65	Moffett Commission Company	30,194	5,504	35,698	3 3/12	10,984	4,442	163	4,60
14	Charles Dixon Commission Company	30,237	4,922	35,159	4 7/12	7,671	6,268	667	6,93
4	Ragland-Storts-Burrus Commission Co	30,154	3,006	33,160	2 5/12	13,721	2,094	509	2,60
70	W. C. Kile Commission Company	28,426	4,169	32,595	3	10,865	5,962	410	6,37
56	Robinson-Hoover Commission Company	28,030	1,659	29,689	2	14,844	4,368	1	4,36
26	Wester Bros. & Smith Commission Company	24,126	4,427	28,553	2	14,277	1,410	420	1,83
62	Laird Bros. Commission Company	23,891	4,218	28,109	2 6/12	11,243	3,430	—	3,43
20	Kansas City Livestock Commission Co	23,208	4,407	27,615	3	9,205	3,936	769	4,70
53	Ehrke-Martin Livestock Commission Co	24,675	2,226	26,901	3	8,967	1,506	151	1,65
34	Warren-Cummings Livestock Comm. Co	24,387	2,472	26,859	3 1/12	8,057	25,231	135	25,36
23	Fern O. Sanders Livestock Comm. Co	23,063	3,156	26,219	3	8,740	7,998	725	8,72
51	Harry Kennaley Commission Company[8]	10,683	11,330	22,013	2 3/12	9,783	385	97	48
44	W. M. Leitch Sheep Commission Co.[9]	—	—	—	—	—	—	—	—

*Sold on split-commission basis by another firm.

1/ Firm No. 59) I. S. H. ... Co. ... 25 ...

[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
10	Producers Commission Association[5]	70,071	10,792	80,863	4 3/12	19,026	37,636	1,015	38,651
36	Farmers Union Livestock Commission Co	61,997	12,367	74,364	4	18,591	11,662	25	11,687
73	Witherspoon Livestock Commission Co	65,824	7,394	73,218	5	14,644	5,418	376	5,794
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42	Long-Perry Livestock Commission Company	49,548	9,793	59,341	3	19,780	6,847	1,304	8,151
12	Bowles Commission Company	49,973	9,243	59,216	3	19,738	6,286	2,445	8,731
35	Drumm-Standish Livestock Commission Co	51,847	4,151	55,998	6	9,333	4,964	696	5,660
13	Crider Commission Company	44,870	10,492	55,362	3 11/12	14,135	8,505	78	8,583
71	Ryan-Robinson Commission Company	50,388	3,552	53,940	5 3/12	10,274	7,820	278	8,098
55	Wright & Baucus	39,631	7,999	47,630	3 5/12	13,940	12,223	1,260	13,483
18	Haggart-Wilson Livestock Commission Co	42,901	3,854	46,755	3 8/12	12,751	11,498	854	12,352
83	Burlington Livestock Commission Co	42,108	3,691	45,799	3	15,266	75,013	1,295	76,308
25	Stuart Gillespie & Company	37,769	4,276	42,045	3 9/12	11,212	9,709	1,558	10,267
48	Poole-Dempsey-Rutherford L. S. Comm. Co	32,417	3,959	36,376	3	12,125	5,728	255	5,983
65	Moffett Commission Company	30,194	5,504	35,698	3 3/12	10,984	4,442	163	4,605
14	Charles Dixon Commission Company	30,237	4,922	35,159	4 7/12	7,671	6,268	667	6,935
4	Ragland-Storts-Burrus Commission Co	30,154	3,006	33,160	2 5/12	13,721	2,094	509	2,603
70	W. C. Kile Commission Company	28,426	4,169	32,595	3	10,865	5,962	410	6,372
56	Robinson-Hoover Commission Company	28,030	1,659	29,689	2	14,844	4,368	1	4,369
26	Wester Bros. & Smith Commission Company	24,126	4,427	28,553	2	14,277	1,410	420	1,830
62	Laird Bros. Commission Company	23,891	4,218	28,109	2 6/12	11,243	3,430	—	3,430
20	Kansas City Livestock Commission Co	23,208	4,407	27,615	3	9,205	3,936	769	4,705
53	Ehrke-Martin Livestock Commission Co	24,675	2,226	26,901	3	8,967	1,506	151	1,657
34	Warren-Cummings Livestock Comm. Co	24,387	2,472	26,859	3 4/12	8,057	25,231	135	25,366
23	Fern O. Sanders Livestock Comm. Co	23,063	3,156	26,219	3	8,740	7,998	725	8,723
51	Harry Kennaley Commission Company[8]	10,683	11,330	22,013	2 8/12	9,783	385	97	482
44	W. M. Leitch Sheep Commission Co.[9]	—	—	—	—	—	—	—	—

*Sold on split-commission basis by another firm.

[1](Firm No. 59) L. S. Jones, Govt. No. 37, whose time is distributed in the Questionnaire relating to this firm's employees (Govt. Ex. 115B, R. Vol. IV, time was devoted to selling cattle and calves. We have, therefore, listed him as a cattle salesman and eliminated him from the list of buyers.

[2]Evidence (C. H. Haren) that sheep yardman employed by John Clay and Company assists with selling during peak periods, particularly on native sheep

[3]These hog salesmen did all their own yarding (Govt. Ex. 115-B, R. Vol. IV, p. 116).

[4](Firm No. 63) The same situation obtains with this firm as with Firm No. 59. O. E. Hover, Govt. No. 41, is listed in the Questionnaire as an emplo devoted to selling cattle and calves. We have, therefore, counted him as a cattle salesman and not as a cattle buyer.

[5]The manager (Angle) and a salesman (Ecton) were the witnesses who gave their opinion at the first hearing before the Secretary that a cattle salesman sheep, per year. Upon the basis of this testimony, the Secretary rested his estimates of 29,000 head per year of cattle, 85,000 head per year of hogs, and 250,00 the order.

[6]This concern employed five hog yardmen to assist the salesmen in the selling of these hogs. One salesman received annual salary of $8,800.

[7]Only one buyer employed, devoting part time to correspondence and office work (Govt. Ex. 115-B, R. Vol. IV, p. 123).

[8]This firm is out of business and is represented in this proceeding by the bonding company, surety on its bond, in respect of which a liability to shippers in excess of $20,000. The operator of this firm, Harry Kennaley, testified: "I have had the experience of receiving so many hogs in the past three months that three salesmen selling hogs had the assistance of five yardmen (Govt. Ex. 115B, R. Vol. IV, pp. 62, 63).

[9]This market agency handles only sheep.

[10]The composition of the figures in this column is explained in the Analysis of Government's Exhibit 115B, set out on the following page (Appendix

APPENDIX B

AVERAGE PERFORMANCE PER SALESMAN BY FIRMS—YEAR 1931

) and shows the average performance per salesman by head as to agencies commencing with the largest in point of 1931 volume and includes all agencies that sold ness in hogs or sheep. It appears from the schedule that in the case of no single agency did the volume per salesman in respect of cattle or hogs approach the hypo- ble by the order.

nonths, he is counted as $^{3}/_{12}$ of a salesman; if for 7 months, $^{7}/_{12}$, etc. In practically all instances, these extra salesmen worked during the period of peak receipts. 15-B" tabulation.)

TLE												
	BUYING					HOGS			SHEEP		
Head per Salesman	Number of Cattle (Govt. Ex. 115, p. 65, R. Vol. III, p. 31)	Number of Calves (Govt. Ex. 115, p. 66, R. Vol. III, p. 33	Total Head	Number of Buyers 10 (Govt. Ex. 115-B, R. Vol. IV)	Head per Buyer	Total Head (Govt. Ex. 115, p. 67, R. Vol. III, p. 35)	Number of Salesmen[10] (Govt. Ex. 115-B, R. Vol. IV)	Head per Salesman	Total Head (Govt. Ex. 115, p. 68, R. Vol. III, p. 37)	Number of Salesmen[10] (Govt. Ex. 115-B, R. Vol. IV)	Head per Salesman
19,733	25,715	1,012	26,727	$2^{3}/_{12}$	11,878	70,554	2	35,277	205,441	2	102,720
23,866	62,131	5,836	67,967	2	33,983	27,122	$1^{7}/_{12}$	17,129	591,028	2	295,514[2]
16,519	58,231	88	58,319	4	14,579	33,474	$1^{11}/_{12}$	17,464	7,795	0	*
15,114	17,242	2,525	19,767	2	9,883	30,135	$1^{1}/_{12}$	22,601[3]	2,007	0	*
17,954	37,065	2,052	39,117	$3^{7}/_{12}$	10,916	150,806	2	75,403	43,330	1	43,330
19,026	37,636	1,015	38,651	$2^{1}/_{12}$	18,553	96,653	$2^{4}/_{12}$	41,422	94,843	1	94,843
18,591	11,662	25	11,687	$0^{8}/_{12}$	17,530	147,922	2	73,961[6]	36,575	1	36,575
14,644	5,418	376	5,794	1	5,794	34,425	2	17,213	4,035	0	*
15,561	5,105	261	5,366	1	5,366[7]	11,944	1	11,944	150,283	1	150,283
19,780	6,847	1,304	8,151	$1^{2}/_{12}$	6,986	11,442	1	11,442	1,460	0	*
19,738	6,286	2,445	8,731	1	8,731	28,132	1	28,132	3,439	0	*
9,333	4,964	696	5,660	1	5,660	12,017	1	12,017	44,036	1	44,036
14,135	8,505	78	8,583	$1^{1}/_{12}$	7,923	40,816	1	40,816	5,688	0	*
10,274	7,820	278	8,098	1	8,098	20,323	1	20,323	1,414	0	*
13,940	12,223	1,260	13,483	1	13,483	21,227	1	21,227	3,685	0	*
12,751	11,498	854	12,352	0	—	11,653	2	5,827	3,157	0	*
15,266	75,013	1,295	76,308	$3^{7}/_{12}$	21,295	4,078	$1^{3}/_{12}$	3,262	2,380	0	*
11,212	9,709	1,558	10,267	1	10,267	19,201	1	19,201	3,676	0	*
12,125	5,728	255	5,983	1	5,983	5,952	1	5,952	430	0	*
10,984	4,442	163	4,605	1	4,605	7,619	1	7,619	2,184	0	*
7,671	6,268	667	6,935	$1^{2}/_{12}$	5,944	27,819	2	13,909	7,365	0	*
13,721	2,094	509	2,603	$0^{4}/_{12}$	7,809	9,552	$0^{8}/_{12}$	14,327	1,896	0	*
10,865	5,962	410	6,372	1	6,372	13,628	1	13,628	2,507	0	*
14,844	4,368	1	4,369	0	—	8,191	1	8,191	4,924	0	*
14,277	1,410	420	1,830	$0^{3}/_{12}$	7,320	20,321	$1^{11}/_{12}$	10,602	2,657	0	*
11,243	3,430	—	3,430	$0^{6}/_{12}$	6,860	15,810	1	15,810	3,065	0	*
9,205	3,936	769	4,705	1	4,705	3,727	0	*	872	0	*
8,967	1,506	151	1,657	0	—	18,764	1	18,764	733	0	*
8,057	25,231	135	25,366	1	25,366	16,312	1	16,312	190	0	*
8,740	7,998	725	8,723	1	—	1,536	0	*	862	0	*
9,783	385	97	482	0	—	159,184	$2^{2}/_{12}$	73,469	6,942	0	*
—	—	—	—	0	—	—	0	—	267,391	2	133,695

18,591	11,662	25	11,687	0 5/12	17,530	147,922	2	73,961	36,575	1	36,575
14,644	5,418	376	5,794	1	5,794	34,425	2	17,213	4,035	0	*
15,561	5,105	261	5,366	1	5,366	11,944	1	11,944	150,283	1	150,283
19,780	6,847	1,304	8,151	1 2/12	6,986	11,442	1	11,442	1,460	0	*
19,738	6,286	2,445	8,731	1	8,731	28,132	1	28,132	3,439	0	*
9,333	4,964	696	5,660	1	5,660	12,017	1	12,017	44,036	1	44,036
14,135	8,505	78	8,583	1 1/12	7,923	40,816	1	40,816	5,688	0	*
10,274	7,820	278	8,098	1	8,098	20,323	1	20,323	1,414	0	*
13,940	12,223	1,260	13,483	1	13,483	21,227	1	21,227	3,685	0	*
12,751	11,498	854	12,352	0	—	11,653	2	5,827	3,157	0	*
15,266	75,013	1,295	76,308	3 7/12	21,295	4,078	1 3/12	3,262	2,380	0	*
11,212	9,709	1,558	10,267	1	10,267	19,201	1	19,201	3,676	0	*
12,125	5,728	255	5,983	1	5,983	5,952	1	5,952	430	0	*
10,984	4,442	163	4,605	1	4,605	7,619	1	7,619	2,184	0	*
7,671	6,268	667	6,935	1 2/12	5,944	27,819	2	13,909	7,365	0	*
13,721	2,094	509	2,603	0 1/12	7,809	9,552	0 8/12	14,327	1,896	0	*
10,865	5,962	410	6,372	1	6,372	13,628	1	13,628	2,507	0	*
14,844	4,368	1	4,369	0	—	8,191	1	8,191	4,924	0	*
14,277	1,410	420	1,830	0 3/12	7,320	20,321	1 11/12	10,602	2,657	0	*
11,243	3,430	—	3,430	0 6/12	6,860	15,810	1	15,810	3,065	0	*
9,205	3,936	769	4,705	1	4,705	3,727	0	*	872	0	*
8,967	1,506	151	1,657	0	—	18,764	1	18,764	733	0	*
8,057	25,231	135	25,366	1	25,366	16,312	1	16,312	190	0	*
8,740	7,998	725	8,723	1	—	1,536	0	*	862	0	*
9,783	385	97	482	0	—	159,184	2 7/12	73,469	6,942	0	*
—	—	—	—	0	—	—	0	—	267,391	2	133,695

this firm's employees (Govt. Ex. 115B, R. Vol. IV, p. 77), is there listed as a full-time cattle buyer. The Questionnaire shows, however, that 65% of his inated him from the list of buyers.

ling during peak periods, particularly on native sheep and drive-ins (R. 459).

Govt. No. 41, is listed in the Questionnaire as an employed cattle buyer (R. Vol. IV., p. 86). The distribution of his time shows, however, that 76% thereof was tle buyer.

st hearing before the Secretary that a cattle salesman could sell 1,500 cars of cattle; a hog salesman, 1,500 to 2,000 cars of hogs; and a sheep salesman, 1,000 cars of of cattle, 85,000 head per year of hogs, and 250,000 head per year of sheep as reasonable performance for salesmen as the basis of cost calculations contained in

lesman received annual salary of $8,800.

B, R. Vol. IV, p. 123).

its bond, in respect of which a liability to shippers has accrued since the filing of the petitions and was paid by the bonding company, amounting to a sum in ving so many hogs in the past three months that I did not give a good many of them the right kind of selling, feeding or handling of them" (R. 578). The

it 115B, set out on the following page (Appendix C).

Govt. Firm No.	Page No. in Govt. Ex. 115-B	Name of Concern	CATTLE SALESMEN					HOG SALESMEN		
			No. of full-time Employed Salesmen	No. of extra Employed Salesmen	Total Employed Salesmen	No. of Owner Salesmen	Total Owner and Employed Salesmen	No. of full-time Employed Salesmen	No. of extra Employed Salesmen	Total Employed Salesmen
51	62	Kennaley Commission Company	2	2 mos. 1 mo.	2 5/12	—	2 5/12	1	2 mos.	1 2/12
52	65	Jefferson-Lowery-Davis	—	7 mos. 2/3 mo. 3 1/2 mos.	11/12	1 2/12	2 1/12	—	7 mos.	7/12
53	67	Ehrke-Martin Livestock Commission Company	1	—	1	2	3	1	—	1
54	69	John Clay and Company	4	7 mos. 4 mos.	4 11/12	—	4 11/12	1	7 mos.	1 7/12
55	73	Wright & Baucus	2	5 mos.	2 5/12	1	3 5/12	1	—	1
56	75	Robinson-Hoover Commission Company	—	—	—	2	2	1	—	1
59	76	Swift & Henry	4	—	4	2	6	1	—	1
60	80	E. Theis & Sons	—	—	—	3	3	—	—	—
61	82	Ham Knighton Livestock Commission Company	2	—	2	—	2	—	—	—
62	84	Laird Bros.	1	—	1	1 6/12*	2 6/12	1	—	1
63	86	Martin, Blomquist & Lee Commission Co.	1	—	1	3	4	1	—	1
65	91	Moffett Commission Company	2	3 mos.	2 3/12	1	3 3/12	1	—	1
66	93	Jay D. McCormack	—	—	—	1	1	—	—	—
67	94	W. H. Peed Livestock Commission Company	—	—	—	—	—	—	—	—
70	95	W. C. Kile	2	—	2	1	3	1	—	1
71	97	Ryan-Robinson Commission Company	3	—	3	2 3/12	5 3/12	—	1 mo. 11 mos.	1
72	100	Welch Commission Company	—	—	—	1	1	—	—	—
73	101	Witherspoon Livestock Commission Company	2	—	2	3	5	2	—	2
74	104	Frank Boddington Livestock Commission Co.	1	—	1	1	2	—	—	—
75	106	W. E. Curtis & Co.	1	—	1	1	2	—	11 mos.	11/12
76	108	Greer & Company	2	—	2	1	3	1	—	1
77	110	Inman Hutton	1	—	1	2	3	—	—	—
78	112	W. G. Land Livestock Commission Company	2	—	2	—	2	—	3 mos.	3/12
79	114	Les White Livestock Commission Company	1	—	1	1	2	—	8 mos.	8/12
82	116	Wilson, Egan & Co.	3	—	3	3	6	1	4 mos.	1 4/12
83	119	Burlington Livestock Commission Co.	1	—	1	2	3	1	3 mos.	1 3/12
84	123	Cassidy Livestock Commission Co.	2	—	2	2	4	—	—	—
87	126	Dave Hamer Livestock Commission Company	—	—	—	—	—	—	—	—
88	128	Ira Kimmons	—	—	—	6/12	6/12	—	—	—
10	129	Producers Commission Association	4	3 mos.	4 3/12	—	4 3/12	2	4 mos.	2 4/12
36	134	Farmers Union Livestock Commission Co.	4	—	4	—	4	2	—	2

*One owner of Firm No. 62 appears to divide his time equally between selling and buying and has therefore been treated as 6/12 of an owner salesman and 6/

ernment's Exhibit 115-B—(*Continued*)

HOG SALESMEN				SHEEP SALESMEN					CATTLE BUYERS				
No. of extra Employed Salesmen	Total Employed Salesmen	No. of Owner Salesmen	Total Owner and Employed Salesmen	No. of full-time Employed Salesmen	No. of extra Employed Salesmen	Total Employed Salesmen	No. of Owner Salesmen	Total Owner and Employed Salesmen	No. of full-time Employed Buyers	No. of extra Employed Buyers	Total Employed Buyers	No. of Owner Buyers	Total Owner and Employed Buyers
2 mos.	1 2/12	1	2 2/12	—	—	—	—	—	—	—	—	—	—
7 mos.	7/12	—	7/12	—	—	—	—	—	—	—	—	—	—
—	1	—	1	—	—	—	—	—	—	—	—	—	—
7 mos.	1 7/12	—	1 7/12	2	—	2	—	2	2	—	2	—	2
—	1	—	1	—	—	—	—	—	—	—	—	1	1
—	1	—	1	—	—	—	—	—	—	—	—	—	—
—	1	1	2	2	—	2	—	2	3	3 mos.	3 3/12	—	3 3/12
—	—	1	1	—	—	—	—	—	—	—	—	—	—
—	—	1	1	—	—	—	—	—	—	—	—	—	—
—	1	—	1	—	—	—	—	—	—	—	—	6/12*	6/12
—	1	1	2	1	—	1	—	1	3	7 mos.	3 7/12	1	4 7/12
—	1	—	1	—	—	—	—	—	1	—	1	—	1
—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	5/12	5/12	—	—	—	—	—	—	—	—	—	—
—	1	—	1	—	—	—	—	—	1	—	1	—	1
1 mo. 11 mos.	1	—	1	—	—	—	—	—	1	—	1	—	1
—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	2	—	2	—	—	—	—	—	1	—	1	—	1
—	—	—	—	—	—	—	—	—	—	—	—	—	—
11 mos.	11 1/12	—	11 1/12	—	—	—	—	—	—	3 mos. 5 mos.	8/12	—	8/12
—	1	—	1	—	—	—	—	—	—	—	—	—	—
—	—	1	1	—	—	—	—	—	—	—	—	—	—
3 mos.	3/12	—	3/12	—	—	—	—	—	—	—	—	—	—
8 mos.	8/12	—	8/12	—	—	—	—	—	—	—	—	—	—
4 mos.	1 4/12	—	1 4/12	—	—	—	—	—	1	—	1	1	2
3 mos.	1 3/12	—	1 3/12	—	—	—	—	—	—	8 mos. 4 mos. 8 mos.	1 8/12	1 11/12	3 7/12
—	—	1	1	1	—	1	—	1	1	—	1	—	1
—	—	—	—	—	8 mos.	8/12	1	1 8/12	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—
4 mos.	2 4/12	—	2 4/12	1	—	1	—	1	1 —	5 mos. 8 mos.	2 1/12	—	2 1/12
—	2	—	2	1	—	1	—	1	—	8 mos.	8/12	—	8/12

*an owner salesman and 6/12 of an owner buyer.

INFORMATION CONCERNING SALESMEN'S (OWNERS AND EMPLOY

NOTE: In computing total number of employed salesmen, if an extra salesman worked for three months he is counted as 3/12ths of a salesman

Govt. Firm No.	Page No. in Govt. Ex. 115B	NAME OF CONCERN	CATTLE SALESMEN					HOG SALESME		
			No. of full-time Employed Salesmen	No. of extra Employed Salesmen	Total Employed Salesmen	No. of Owner Salesmen	Total Owner and Employed Salesmen	No. of full-time Employed Salesmen	No. of extra Employed Salesmen	Total Employed Salesmen
1	1	Fred O. Morgan Sons	—	—	—	—	—	—	—	—
4	2	Ragland-Storts Co.	2	2 mos.	2 2/12	3/12	2 5/12	—	8 mos.	8/12
5	5	H. H. Klecker Commission Co.	—	—	—	—	—	—	—	—
6	6	Lewis & Flournoy	1	7 mos.	1 7/12	1	2 7/12	—	—	—
7	8	Maxwell-Furnish	1	—	1	1	2	1	—	1
9	10	John M. Nichols Livestock Commission Co.	—	—	—	—	—	—	—	—
11	11	L. B. Andrews Commission Company	—	5 mos.	5/12	—	5/12	—	1 mo.	1/12
12	13	Bowles Livestock Commission Company	3	—	3	—	3	1	—	1
13	15	Crider Bros.	1	5 mos. 6 mos.	1 11/12	2	3 11/12	1	—	1
14	18	Chas. Dixon Commission Company	1	9½ mos. 9½ mos.	2 7/12	2	4 7/12	2	—	2
15	21	Elliott Swain & Co.	1	—	1	1	2	—	—	—
16	23	Farrar, Davis & Campbell	1	—	1	3	4	1	—	1
17	25	Gladish Livestock Commission Company	—	—	—	1	1	—	—	—
18	26	Haggart-Wilson Livestock Commission Co.	1	—	1	2 8/12	3 8/12	1	—	1
19	28	Interstate Commission Company	—	3 mos. 3 mos. 3 mos.	9/12	3/12	1	—	3 mos.	3/12
20	30	Kansas City Livestock Commission Company	2	—	2	1	3	—	—	—
23	32	F. O. Sanders Livestock Commission Co.	2	—	—	1	3	—	—	—
25	34	Stuart Gillespie & Co.	2	—	2	1 9/12	3 9/12	1	—	1
26	37	Wester Bros. & Smith Commission Co.	1	—	1	1	2	—	11 mos.	11/12
29	39	Stagner, Peironett & Willis	1	—	1	1	2	1	—	1
30	41	Tamblyn Commission Company	1	—	1	2	3	—	—	—
33	43	H. F. Carnes Livestock Commission Company	—	—	—	1	1	—	—	—
34	44	Warren Cummings Livestock Commission Co.	2	4 mos.	2 4/12	1	3 4/12	1	—	1
35	46	Drumm-Standish Commission Co.	1	—	1	5	6	1	—	1
37	49	Link Fasken Livestock Commission Company	—	—	—	6/12	6/12	—	—	—
42	50	Long Perry Livestock Commission Company	1	—	1	2	3	—	—	—
43	53	Knight & Tice	—	—	—	—	—	—	—	—
44	54	W. M. Leitch Sheep Commission Co.	—	—	—	—	—	—	—	—
46	56	National Livestock Commission Company	2	—	2	4	6	1	11 mos.	1 11/12
48	60	Poole-Dempsey-Rutherford	—	—	—	3	3	1	—	1

APPENDIX C

S OF GOVERNMENT'S EXHIBIT 115-B
(Vol. IV of Record)

N's (Owners and Employees) Salaries for the Test Year 1931.

ited as 3/12ths of a salesman; if for 7 months, 7/12ths, etc. In practically all instances these extra salesmen worked during the period of peak receipts.

HOG SALESMEN				SHEEP SALESMEN					CATTLE BUYERS				
No. of extra Employed Salesmen	Total Employed Salesmen	No. of Owner Salesmen	Total Owner and Employed Salesmen	No. of full-time Employed Salesmen	No. of extra Employed Salesmen	Total Employed Salesmen	No. of Owner Salesmen	Total Owner and Employed Salesmen	No. of full-time Employed Buyers	No. of extra Employed Buyers	Total Employed Buyers	No. of Owner Buyers	Total Owner and Employed Buyers
—	—	—	—	—	—	—	1	1	—	—	—	—	—
8 mos.	8/12	—	8/12	—	—	—	—	—	—	4 mos.	4/12	—	4/12
—	—	—	—	2	—	2	1	3	—	—	—	—	—
—	—	1	1	—	—	—	—	—	—	—	—	—	—
—	1	1	2	—	—	—	—	—	—	—	—	—	—
—	—	1	1	—	—	—	—	—	—	—	—	—	—
1 mo.	1/12	—	1/12	—	—	—	—	—	—	—	—	—	—
—	1	—	1	—	—	—	—	—	1	—	1	—	1
—	1	—	1	—	—	—	—	—	1	1 mo.	1 1/12	—	1 1/12
—	2	—	2	—	—	—	—	—	1	2 mos.	1 2/12	—	1 2/12
—	—	1	1	—	—	—	—	—	—	—	—	—	—
—	1	—	1	—	—	—	—	—	—	—	—	—	—
—	—	1	1	—	—	—	—	—	—	—	—	—	—
—	1	1	2	—	—	—	—	—	—	—	—	—	—
3 mos.	3/12	—	3/12	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	1	—	1	—	1
—	—	—	—	—	—	—	—	—	1	—	1	—	1
—	1	—	1	—	—	—	—	—	1	—	1	—	1
11 mos.	11 1/12	1	1 11/12	—	—	—	—	—	—	3 mos.	3/12	—	3/12
—	1	—	1	—	—	—	—	—	—	—	—	1	1
—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	—	—	—	—	—	—	—	—	—	—	—	—	—
—	1	—	1	—	—	—	—	—	1	—	1	—	1
—	1	—	1	1	—	1	—	1	—	—	—	1	1
—	—	—	—	—	—	—	—	—	—	—	—	—	—
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Supreme Court of the United States

OCTOBER TERM, 1935

No. 686

FRED O. MORGAN, doing business as FRED O. MORGAN SHEEP COMMISSION COMPANY, *et al.*,
Appellants,

vs.

THE UNITED STATES OF AMERICA and THE SECRETARY OF AGRICULTURE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

REPLY BRIEF FOR APPELLANTS

FREDERICK H. WOOD,
JOHN B. GAGE,
Counsel for Appellants.

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REPLY BRIEF FOR APPELLANTS.

Appellees' brief contains many statements unsupported by the record and makes many inferences entirely unjustified thereby. It distorts the opinion of the court below and ignores admissions contained in appellees' answer. Many of the statements made in the brief are so patently unsound when examined in the light of the record that it would seem that appellees' purpose was to create doubt and uncertainty, rather than to convince or enlighten the Court, in the hope that as a result of such confusion of statement the questioned order might be permitted to stand. In the light of this situation, and in order to relieve, if possible, the Court from a part of the burden thereby cast upon it, appellants make this reply.*

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*References to paging of appellees' brief, as hereinafter appearing, relate to the page proofs of brief submitted to appellants. At this writing we are not in receipt of appellees' completed brief.

COMMENT ON APPELLEES' STATEMENT.

The statement of appellees' carries a reference (Br. 5) to the schedules of rates and charges of appellants which the order of the Secretary seeks to supersede and states that "on May 11, 1932 * * * appellants filed a new schedule of rates designated as Schedule 3." In view of statements subsequently made in the brief concerning this schedule of rates it should be pointed out that appellants on that date filed individual schedules, not a joint tariff such as was under inquiry in the so-called *Omaha* case. These individual schedules were prepared and filed by the appellants during the pendency of this proceeding and under advice of their attorney. The Secretary's order states that these schedules were filed to reduce the rates by reason of the adverse economic situation which developed in the livestock industry in 1932 in so far as the patrons of appellants were concerned and also to put in effect a less discriminatory schedule in respect of selling charges (FF. 175, R. 126, FF. 112, R. 82). It is admitted in the answer of appellees that the reduction accomplished by the new schedules amounted to more than 10% (R. 140).

It also appears from the record that the original rates and charges were fixed on a uniform basis as to all selling market agencies by an order of the Secretary entered in 1924 in a proceeding under the Packers and Stockyards Act brought on complaint of the American National Livestock Association (Res. Ex. 24). The record discloses that, when hearings were to commence before an examiner appointed by the Secretary, the appellants then engaged in business suggested that they would permit the men placed in charge of the proceeding to make such investigation as they might

desire as to the reasonableness and non-discriminatory character of rates and charges in effect and, if the Secretary after such investigation approved the rates and charges recommended, would abide by them without seeking Court review. The test year taken as a basis for such uniform rates by Howard N. Gore, afterwards Assistant Secretary of Agriculture, and Golden N. Dagger, in charge of Rates and Practices for the Packers and Stockyards Administration, Department of Agriculture, was the year 1923, shown by the evidence in the record to have been in point of volume of receipts the best year appellants experienced within the last decade (Res. Ex. 36). It was a year of large volume and comparatively low livestock prices (Res. Ex. 40).

The rates so established and put in force by an order of the then Secretary of Agriculture were approximately 15% less than the rates theretofore in effect. They remained in effect through a period, not as suggested in appellants' brief "of great prosperity" to appellants, but through a period of depressed volume of receipts which reduced appellants' gross income, although there were high returns to the users of appellants' services because of increased livestock prices. As admitted by the answer it was the rates so determined by the order of the then Secretary of Agriculture in that proceeding which during the course of this proceeding were reduced by 10% under the tariff filed May 11, 1932, and applied under a tariff structure less discriminatory in character.

The statement of appellees refers to the opinion of the District Court and says that "the Court found that the findings of fact made by the Secretary were supported by substantial evidence" (Br. 7), but fails to state that in the final opinion of the majority of the Court filed, June 20, 1935

(R. 164-166), the original opinion upon this question was superseded and the District Court held that salesmanship costs and allowances for "business getting and maintenance" expenses made by the Secretary were against the weight of the evidence but was "not prepared to say that the findings were made without *any* evidence to support them" (emphasis ours) (R. 166). The Court further said in the final opinion that

> "in the *Tagg* case the Court upheld an order of the Secretary in which he used *typical experience* as his guide for determining reasonable costs for rate-making purposes. Typical costs are presumably based on the actual experience of the members of the industry whose rates are under consideration. In this case the Secretary employed hypothetical costs based not upon present, but upon assumed conditions which he expects may exist at some future time. * * *
>
> "Further consideration upon this petition for rehearing convinces that in the instant proceeding the Secretary has departed from the method employed in the *Tagg* case in the particulars pointed out by petitioner as stated above. Furthermore, I think the drastic reduction of advertising and other costs, essential to getting and maintaining business, gives scant consideration to the reasonable necessities of the situation as disclosed by experience" (R. 165, 166).

Departures from the method employed in the *Tagg* case pointed out in this opinion were (1) that the Secretary had employed an unreasonable and arbitrary method of determining so-called reasonable functional unit costs whereby essential competitive costs were drastically reduced in disregard of actual experience and contrary to the provisions of the Packers and Stockyards Act which required the

stockyards to be maintained as a *"public"* and competitive market; (2) the failure to consider the effect of the rates upon individual market agencies and to include the costs essential to the maintenance of a competitive market; (3) that the method employed would result in the establishment of a monopoly of the market and if carried to logical conclusion would stifle competition and tend to weaken and ultimately to destroy the market; (4) that under the order the market agencies involved could not operate at a profit if actual costs resulting from their business operations during the test period were considered (R. 164).

COMMENT ON APPELLEES' SUMMARY OF ARGUMENT

Appellees at this point in the brief indulge in an argumentative assumption, not based on the record or upon any findings of fact made by the Secretary, and injected into the brief for the obvious purpose of prejudicing and confusing the Court in the further consideration of the case. Appellees state (Br. 9) "If as a result of unreasonably high existing rates there are more agencies doing business on the market than the volume of business coming to the market warrants, the fact that as an incidental result of prescribing reasonable rates some agencies may be unable to continue in business does not invalidate the rates prescribed". From this statement the conclusion is drawn that "reasonableness of the rates prescribed by the Secretary is not to be tested by applying those rates to the actual costs incurred by appellants". There was no evidence in the record or before the Secretary that more agencies were engaged in business than the volume of business warranted

"as a result of unreasonably high rates". On the contrary, the evidence disclosed and the answer admits that the rates were relatively low (R. 140).

In the succeeding paragraph of appellees' brief (par. 2, p. 9) appellees through misstating and misquoting appellants' contentions, as presented at the very outset of the proceeding, pursue that method of argument which involves setting up a straw man in order to knock him down again, and thus evade the real issues. Here appellees say that appellants' contention is "that the prescribed rates are confiscatory because they will not cover the costs incurred by, and in addition provide a profit for each market agency now operating in the Kansas City market" (Br. 9). We challenge appellees to point out where at any stage of the proceeding or in the brief filed in this Court on behalf of appellants this contention was urged. On the contrary there appears in appellants' brief the following typical statement (Appellants' Brief, p. 98): "We do not assert that rates must be made so as either to meet the actual costs of each and every agency or the average costs of all. We do assert that they may not be made, and certainly not under the facts of this case, so as to fail to pay the actual expenses of the most efficient, or leave but a bare margin thereover, and again, we repeat, the Secretary did not find that any of these firms were inefficiently operated, unless their failure to attain his hypothetical standards and to conduct their business upon the basis of his hypothetical costs constitutes inefficiency."

ARGUMENT

I.

THERE IS NO MERIT IN THE CONTENTION OF THE APPELLEES THAT COVERING ACTUAL COSTS AS INCURRED BY THE APPELLANTS, OR ANY OF THEM, INTO RATES WILL "DEFEAT AND NULLIFY THE RATE MAKING POWER CONFERRED UPON THE SECRETARY BY THE PACKERS AND STOCKYARDS ACT".

1. The existing rates in this case were not fixed by agreement or monopolistically.

In the development of this argument appellees devote several pages of their Brief to an attempt to show that the rates under inquiry were "monopolistically fixed" as found by the Secretary in the case of *Tagg Bros. & Moorhead v. United States,* 280 U. S. 420. The order of the Secretary in this case, however, contains no finding parallel in any way to that contained in the *Tagg Bros.* case indicating that the rates had been fixed by agreement or were monopolistic. Nevertheless, despite the absence of such finding, for the first time in this entire proceeding and without support from the record, it is charged that the rates were so fixed and that appellants "have eliminated rate competition."

Furthermore, it was shown in evidence that rate competition does exist, not only in buying rates but in selling rates as well. The tariffs filed by the cooperatives doing a large volume of business in direct competition with appellants were upon a different basis and prescribed lower rates and, in addition thereto, provided for refunds of any profit or

saving made under the rates collected in the event operations produced such profits (R. 64, Gov. Ex. 103, 103a, 104). This rate competition with cooperatives, particularly with the Producers Commission Association, was further intensified by the fact that this association was assisted financially, indirectly at least, by the Federal Government (Res. Ex. 4, Release of Federal Farm Board, October 25, 1929, March 5, 1929, R. 356, 514, 515, 516).

Next there appears a description (Br. pp. 17, 18) of the proceedings whereby the rates of appellants first placed under inquiry in this proceeding originated. The attempt is made to make it appear to the Court that the situation in the *Tagg Bros. & Moorhead* case, so far as the origin of the rates is concerned, was similar to that relating to the rates in this case. The statement is made that the market agencies at Omaha had filed a new tariff containing higher rates and charges. The truth as disclosed by the *Omaha* record was that the Exchange at Omaha filed a new tariff containing higher rates and charges. No reference is made to the origin of the new tariffs at Kansas City, which were filed, not by the Exchange but by the individual market agencies, and which did not increase but lowered rates and removed discriminations arising under the old rates in a manner approved by the order of the Secretary in this case. Thus, the appellees, by the statement in each instance of a half-truth, seek to create the false impression of verisimilitude between the two cases in this respect. If such contentions were to be urged in this case the Secretary should have presented them in the order and they should also have found their place in the findings of the lower court (*Railway Commission Company* v. *Maxey*, 281 U. S. 82, 74 L. Ed. 17; *Hammond* v. *Schappi*, 275 U. S. 165, 172, 171, 72 L.

Ed. 219, 221; *Virginia Railway Company* v. *United States*, 272 U. S. 658, 71 L. Ed. 46).

2. It is untrue that with the decline in business there has been no corresponding falling off in personnel, expenses and number of market agencies.

Appellees conclude this portion of the argument with a statement that although the business of the market as a whole has fallen off the number of firms has shown no tendency to decrease. This statement is not correct and directly contradicts all of the evidence in the record; no record references are given in appellees' brief to support it. Inaccurate and unsupported statements of this character are necessarily misleading. Tremendous reductions have occurred not only in overhead, as alleged in plaintiff's petition and not specifically denied in defendant's answer, but also in the number of agencies in operation at the Kansas City Stockyards and in the personnel of the owners of those agencies. As heretofore pointed out, the number of market agencies selling livestock in the Kansas City market has shown a steady decline, being 65 when the rates originally fixed by the Secretary under the Act went into effect in 1924, and diminishing from 1929 on to the present time until, as stated in appellees' own brief, only 43 including the cooperatives now remain. The number of members of the Livestock Exchange has been reduced during this period from over 300 to less than 225, as of 1931 (R. 271). Later on in appellees' brief in arguing another point, and in an attempt to explain away the fact that since these suits were filed 9 agencies have gone out of business, the statement is made "that 18 firms retired from

business between the first and second hearings before the Secretary—a period of less than two years and before impounding commenced" (Br. 53). It is noteworthy that in support of the last statement appellees give record references and that the statement directly contradicts the statement made on page 20 that "the number of firms has shown no tendency to decrease", made without record reference. We submit that such inconsistent and such manifest misstatement does not serve to enlighten the Court upon the true state of the record.

Furthermore, the record discloses that the amount claimed by appellant agencies in respect of compensation for owners' services, as shown by their own cost accountants' figures, was less in the year 1931 than in the year 1929 by $403,208.38, or approximately 22% of the total compensation for the former year (Resp. Ex. 53, 207). The total selling and buying salary cost for all respondents recognized by the chief accountant for the Government was less in 1931 by $231,703.51 than in the year 1929, or a reduction of approximately 30%.[1] And yet in this paragraph of the brief we find the following statement made without record reference:

> "The record in this case discloses that the most important items of cost have mounted with reduction of volume of receipts coming to the market" (Br. p. 30).

Certainly, statements of the character above referred to, and we have referred in substance to all of the statements

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[1]Gov. Ex. 15, p. 10, col. 2; Gov. Ex. 115, pp. 7^1 and 7^2, col. 3. The Government's accountants included as costs in their cost studies for 1931 (Gov. Ex. 115) owner compensation not included in the studies for 1929 (Gov. Ex. 15).

made in this section of the brief, do not furnish adequate support for the conclusion that recognition of actual costs in respect to the business of any agency or group of agencies would serve "to defeat or nullify the rate making power of the Secretary".

3. The appellants do not contend that the Secretary must fix rates which will preserve all of the existing market agencies.

The next proposition urged by the appellees is that there is no basis for appellants' contention that the Secretary must fix rates which will preserve all the existing market agencies. We have heretofore pointed out that no such contention has been advanced by appellants. The practice of setting up a straw man to knock him down again and thus to misrepresent appellants' contentions does not serve to advance a proper understanding of the issues.

Appellees correctly say that the whole order of the Secretary is challenged by appellants because "grounded upon the Secretary's opinion that there are too many market agencies and too much competition in the business and that he has set about to prescribe rates which will accomplish his allegedly illegal purpose to reduce the number of market agencies competing for the business at the Kansas City Stockyards". The statement is then made that appellants do not attempt to press this to the *"inevitable"* conclusion, to wit, that the Secretary has no authority to make a rate order that "does not preserve all existing marketing agencies". It is said that this conclusion exposes the fallacy of the premise (Br. 22). The answer is that the

conclusion which appellees refer to is neither logical nor inevitable and is in direct conflict with the actual conclusion resulting from the situation as stated and set forth in appellants' brief (Appellants' Br., p. 168). Let us assume that among these competitors, as in the *Tagg* case, the Secretary employs as a guide the actually experienced costs of a group of representative or typical agencies who are efficiently conducting their business under the conditions existing at the time the inquiry and investigation is made. In other words, let us presume that he makes the character of investigation customarily made by the Interstate Commerce Commission as illustrated in the various opinions of that Commission referred to in appellants' brief. The result will manifestly be a rate covering the actual and necessary costs of these typical and representative agencies incurred under actual operating conditions, as stated in appellants' brief. It will not be, as appellees demand, a rate that would fail to cover the cost of any of these typical and representative agencies and which would relate itself wholly to problematical conditions which may exist at some future time when a large number of these or other agencies have been driven out of business by unremunerative rates. Assuming that the rates are determined upon the basis of the typical or normal costs of representative agencies, manifestly there will be many agencies as to whom such rates will be non-reimbursible of actual costs. Appellants do not complain of this.

None of the appellants, on the sole ground of confiscation, would have the right to complain of the rate because it was confiscatory as to another appellant or group of appellants. *Aetna Insurance Company* v. *Hyde*, 275 U. S.

440. And this situation, as far as the issue of confiscation is concerned, leaves the Secretary free to apply one rate to one petitioner and one rate to another petitioner. This, as appellees in effect admit, would "compel retirement from the competitive field" of agencies that could not meet the competition of the agencies for which lower rates had been prescribed, either by a greater selling efficiency or by lowering costs. Therefore, appellants' argument in this respect is not "simply an attempt to nullify the rate making power over market agencies" but to support and sustain it and align it with the facts applicable to each individual appellant. At the very outset of the proceeding and at the time the first hearing was commenced before an examiner appointed by the Secretary, it is shown by the record that each appellant severally demanded an individual hearing and determination of the issue as to him (R. 199). This demand has been constantly reiterated and the individuality of the proceedings as to each appellant maintained in so far as it was in the power of the appellants to maintain it.

4. There is no merit in appellees' contention that the Secretary's rates cannot be tested by actual costs.

At this point appellees again beg the question by an assumption that the costs incurred by appellants are "unreasonable costs" and without reference to the record or any finding of evidentiary fact contained in the Secretary's order reach the conclusion that actual costs furnish

> "no criterion of the reasonableness of the prescribed rates" (Br. 26).

The statement is then made that there are certain costs which the conditions of the business tend to hold down and that

> "certain other costs (salesmanship and business getting and maintaining), the conditions of business as carried on at the Kansas City Stockyards tend to increase".

Again no reference to the voluminous record is made and the conclusion reached is as barren of factual support as is a similar statement appearing in the order of the Secretary (FF. 131, R. 91). As to just why costs relating to salesmanship and business-getting and maintaining, including the expense of maintaining the livestock exchange, traveling expense, market reports to shippers, automobile expense and other like expenditures are incurred under conditions which do not tend to limit their amount, while other categories of expense such as yarding, office work, administration expense, etc., are of a type which conditions tend to hold down, is unexplained either by the order or by appellees' brief. It will be noted that this conclusion of ultimate fact is the one upon which the departure from the use of actual costs as a criterion and guide for the determination of reasonable costs in connection with the great bulk of expense incurred in the operation of appellants' businesses is based. It does not follow that the "conditions" which tend to increase certain categories of costs are conditions which make such costs in the amounts incurred *unnecessary* costs. Even the conclusion itself does not adopt the premise that appellants individually or collectively have any power to control the conditions, whatever they may be, that tend to increase instead of diminish these costs. It is thus apparent that the use

of the phrase "unreasonable costs" as employed by appellees cannot, even upon their own theory, be construed to mean "unnecessary costs" or costs which the appellants and each of them were not inevitably and necessarily required by the "conditions of the business at the Kansas City stockyards" to incur. In other words, under appellees' theory as stated in the opinion of the majority of the court below by Van Valkenburgh, *J.*, these costs which were disallowed and manifestly are not covered by the prescribed rates were "essential to getting and maintaining business" (R. 165, 166).

Appellees, having failed to establish the propriety of disallowing any part of the costs actually incurred, abandon the sequence of the argument and inject the statement "that the maximum rates prescribed" if applied in 1931 would have yielded "approximately $112,000 in excess of the costs found by the Secretary to be reasonable for all species of livestock for the market as a whole" (Br. 28). A similar statement is again injected into appellees' brief under Point V (Br. pp. 66, 67). The statement, as hereinafter pointed out, is misleading and disregards entirely the effect of the opinion of the court below. It constitutes a studied and deliberate attempt to lead the court into the erroneous belief that the Secretary either by intentional act or by inadvertence, was more than fair to appellants in the determination of the altitude of the prescribed rates (see *infra*, pp. 26, 27, 28).

II.

APPELLEES' CONTENTION THAT THE CASES DO NOT PRESENT ANY ISSUE OF CONFISCATION IS WITHOUT MERIT.

The concession is made by appellees, in contradistinction to the position taken by the rate-making authority in *Aetna Insurance Company* v. *Hyde*, 275 U. S. 440; in *Tagg Bros. & Moorhead* v. *United States, supra;* and in the recently submitted case of *Acker et al.* v. *United States,* that the several individual petitions filed on behalf of each of the appellants, from a procedural standpoint, contain allegations sufficient in content and context to raise the issue of confiscation. It is, however, contended by appellees that the validity of the order in question involves only the question of a fair or reasonable return upon personal services rendered by appellants in the public interest, and not primarily the question of "a fair return upon the fair value of property employed in the public service" (Br. 35). It is asserted that under the Fifth Amendment to the Constitution of the United States, the right of the individual employing his property in the public service to a fair return upon the value of that property receives protection against invasion, whereas the right of the individual to a fair return for his personal services, likewise rendered in the interest of the public, is not thus safeguarded. This contention is made despite the express language of the Fifth Amendment, extending, as it does, the scope of its application to "life, liberty and property". The argument is that inasmuch as no "specific criteria" governing the amount of the fair return to which the individual may be entitled for his

personal services exist, the constitutional safeguard is, therefore, incapable of enforcement. The question is fully discussed in the main brief of appellants. It is not, in our judgment, debatable. It may be observed, however, that it is not customary in legislative acts to set forth the amount of the fair return to which property employed in public service, and as to which it may receive the protection of this Amendment, is entitled. Courts have properly reserved to themselves the right, upon the evidence, to pass upon the question as to the rate of return allowed. This has been true for the self-evident reason that the determination of this rate, whether it be 4%, 5% or 8%, involves the question whether or not property has received that protection to which it is entitled under due process.

In this proceeding the Secretary has determined that a fair annual compensation to an owner cattle salesman, under conditions obtaining at the Kansas City stockyards during the test year, was $4,000, and the Secretary has also determined that 6% was a fair return on the working capital that was employed in the public service. If the amounts which the Secretary considers to be fair returns for personal services are applied in the instance of each of appellants' agencies as a measure of the fair return to owners for their services, the order is confiscatory as to every appellant, not upon the basis of "calculable costs", as indicated by appellees' brief, but, as alleged, upon the basis of the Government's own costs (Pet. Ex. 4, sheets 1 and 2, Appellants' Br. p. 36). The appellees should not, as they apparently do in their brief (Br. p. 37), confuse their own inability or unwillingness to suggest a method for the determination of the amount of fair return to which owners are

entitled, with the inability either of appellants, or of this Court, to do so. The applicable law, stated by Mr. Justice McReynolds in *Calhoun* v. *Massie*, 253 U. S. 170, 182, in his dissenting opinion in that case, has never heretofore been the subject of challenge from any responsible source.

> "The Fifth Amendment was intended to protect the individual against arbitrary exercise of federal power. It declares no person shall be deprived of life, liberty or property without due process of law, and this inhibition protects every man in his right to engage in honest and useful work for compensation. *Adair* v. *United States*, 208 U. S. 161; *Coppage* v. *Kansas*, 236 U. S. 1; *Adams* v. *Tanner*, 244 U. S. 590."

In this portion of the brief appellees repeat the statement that appellants "have protected themselves against one of the most usual causes of the destruction of a business—*i.e.*, price competition". Again no record reference appears, and again the statement is unsupported by any finding of the Secretary or by any facts contained in the record. Exactly the contrary appears, for, as heretofore pointed out, the most dangerous form of price competition exists, namely, that of cooperative agencies which do not stand on their own feet. They are encouraged by the Secretary to engage in making the very expenditures of money and effort and time which the appellees in this very brief would have the Court believe are "unreasonable, extravagant and excessive" (Res. Ex. 18, R. 231, 350, 351).

III.

APPELLANTS' CONTENTION THAT THE PRESCRIBED RATES "ARE RUINOUS" IS MERITORIOUS.

Appellees attempt to urge the following propositions upon the court in this section of their brief (Br., pp. 48 to 55).

> (1) The opinion of Judge Van Valkenburgh on rehearing, concurred in by Reeves, *J.* (R. 164-166), holding that the Secretary failed to cover into the rates prescribed essential competitive costs and ignored and failed to adopt the method of rate making approved in the *Tagg* case, did not modify the original opinion of the court because "the petition for rehearing (R. 159-161) was based solely on alleged errors of law and did not request a review of the evidence."
>
> (2) That the vastly larger returns under the rates prescribed in the *Tagg Brothers* case at Omaha, as shown by the excerpt from the Record of that case produced in appellants' brief, is not persuasive inasmuch as comparison of conditions at the two stockyards "shows a notable difference in favor of the Omaha stockyards as to the volume of animals handled" (Br. 55).

As to the first proposition, that the petition for rehearing did not authorize the court below to review the evidence and alter its findings of fact, reference to Section III of the petition for rehearing (R. 160) discloses that this petition charged that the findings of fact con-

tained in the original petition did not meet the requirements of Equity Rule 70½, disregarded many of the admissions of appellees contained in the joint answer filed, and by purporting to adopt the Secretary's findings of fact left it uncertain and subject to misunderstanding as to just what the court's findings of fact were, and failed to disclose which of the issues presented and not considered by the court were deemed material and relevant and which were immaterial and irrelevant (R. 161). Consideration of this motion demanded of the court that the findings of fact be reconsidered. The result was another opinion by the majority of the court sustaining the position of appellants from a factual standpoint but holding, as Judge Van Valkenburgh had held in his original concurring opinion, that under the law the Secretary "was possessed of almost dictatorial power." Appellees misquote the opinions of Judge Van Valkenburgh when the statement is made that he found the order to have been supported by "substantial evidence". His opinion, concurred in by Judge Reeves, shows that he was "not prepared to say that the findings were made without *any evidence* to support them" and therefore joined in the entry of the decree "in the hope that renewed application to the Secretary may bring relief" (R. 166). As pointed out in appellants' brief, the court labored under a misapprehension of law as to its authority in connection with the review of the order of the Secretary.

The second proposition advanced by appellees is equally without support in the Record. It is true that a larger amount of live stock was handled by the market agencies operating at the Omaha stockyards than was the case at Kansas City. A number of these agencies (the Group A agencies referred to in the order of the Secretary in the

Omaha case) exceeded in the number of head sold per salesman the hypothetical figure adopted in that case by the Secretary as a reasonable salesman's performance. This, as pointed out in appellants' brief, was not true in the case of any agency at Kansas City.

The unsupported statement is made that the diversity in number of head per salesman in favor of Omaha as against Kansas City is an "indication that the Kansas City stockyards in 1931 was obviously overmanned in comparison with the Omaha stockyards in 1925". There was, however, no evidence in the Record as to performance at Omaha. This statement, moreover, is made in direct conflict with all of the evidence in the Record. Undisputed testimony disclosed that it was much more difficult for salesmen to dispose of live stock on account of greater diversity of grades, qualities and weights at Kansas City than at Omaha, and that handling of cattle in the yards was much more difficult at Kansas City than at Omaha due to the long and narrow construction of the yards at Kansas City as compared with the relatively square construction at Omaha (R. 320-324, 329, 331, 571). This, in conjunction with the much smaller number of head of live stock handled per consignment in 1931 as compared with the year 1925 as set forth in the evidence and in the findings of the Secretary accounts for the differential (FF. 28, R. 40). All of the evidence in the Record at Kansas City showed beyond question that during the peak periods the entire personnel was required for the proper handling of the live stock upon the market, and was engaged in the performance of their duties during these peak periods for hours per day that would be considered very excessive in any other industry (R. 316, 447, 459, 460, 479, 491, 513, 609).

IV.

THE CONTENTION THAT THE RATES PRESCRIBED BY THE SECRETARY WERE DETERMINED BY A LAWFUL METHOD AND UNDER THE SAME PROCEDURE AS WAS FOLLOWED IN THE *TAGG* CASE, CANNOT BE SUSTAINED.

Appellees' brief itself points out the first line of distinction between the method followed by the Secretary in the determination of rates in the case at bar and that followed in the *Tagg* case. This difference was noted by the court below. This appears when the statement is made by appellees (Br. p. 58) that the Secretary classified costs into two groups (1) costs which the conditions of the business tend to keep down, and (2) costs which the conditions of the business tend to increase. The record and order in the *Tagg* case will be searched in vain for any cost classification of that character. In the instant case, while the classification is made, as suggested by the brief, in the form of a finding or conclusion of ultimate fact in the order of the Secretary, it is, as pointed out in appellants' main brief, unsupported by any evidentiary findings. No statement is made as to the nature of the "conditions of the business" to which this conclusion has reference, nor does the order in any way specify why such unnamed conditions in one instance tend to keep down costs and, in another instance, tend to increase costs. Common knowledge applied to the various categories of costs does not suggest a distinction. Apparently differentiation arose out of a desire on the part of the Secretary to place certain costs constituting a large element of the total expense in a category which would sug-

gest a treatment entirely hypothetical and under which the largest proportion of such costs, as actually incurred, would be eliminated from consideration.

Upon page 61 of appellees' brief appears a table which purports to show in one column the "weighted average actual unit cost" for each of the functions which the order claims "the conditions of the business" tend to keep down. Apparently in this column, as to all three species, the appellees have in four instances (yarding expense, office expense, administrative and general expense, risk expense and interest expense), taken the weighted average actual cost developed from the books and records of appellants and shown in the statistical cost study of the Secretary's chief accountant (Gov. Ex. 115). As to yarding and office salary cost, however, this column fails to reflect the accountant's "weighted average actual unit cost," but sets forth recalculated cost figures more than 33⅓% lower than the actual costs found by the Government's accountant. Thus, in respect of yarding cattle and calves, the average cost on this table is stated to be 7.04c., while it is said the Secretary allowed as reasonable 7.50c. As a matter of fact, weighted average actual unit cost, found by the Government accountant in respect to yarding cattle and calves, appears at page 7 of Government Exhibit 115, column 8, and is 9.63c. per head.[1] In column 12 at the same page of the same Government exhibit appears the weighted average actual unit cost in respect to office salaries. This, as stated by the Government accountant, is 8.23c. per head, instead of 4.8c. per head, as set forth in the inaccurate and misleading table contained in appellees' brief

[1]See R. Vol. III, p. 24, col. 8.

(p. 61). Correction of these two inaccurate figures contained in the table results in a total "weighted average actual cost" for all these classifications of expense, of 4.96c. per head in excess of the so-called reasonable cost to the Secretary. Applying this differential to the total number of head (2,489,772) handled during the year, the result is that, instead of being in excess of the weighted average actual cost in respect of these items of expense, as set forth in this table prepared by appellees, *the reasonable cost of the Secretary is less than the weighted average actual cost by the sum of $123,492.69.*

At this point appellees insert a long quotation from the opinion of the district court in *Tagg Bros. & Moorhead* v. *United States*, 29 F. (2d) 750, having to do with the method the Secretary followed in determining the cost allowances in that case, and follow this with the statement that the only difference in cost treatment between the two orders was that in the *Tagg* case the per car basis was used, while in the *Kansas City* case the per head basis was employed. What the appellees fail to do is to include in the quotation the following pertinent statements applicable to the order there, but inapplicable to the order in the cases before this Court, as follows (l. c. 545, 545):

> "Under these conditions, the Secretary declined to adopt averages of actual cost to the different agencies, and set before himself the task of finding the normal and reasonable cost per car of rendering the service for each species, cattle, hogs, and sheep. Then, itemizing the out-of-pocket cost apportioned on a per car basis for each species, he said that in each instance the figure adopted was 'a normal of the actual cost of the particular item to those firms

whose financial condition exhibits ordinary efficient management in their business'. This resulted in his finding that the reasonable cost of handling a car in the year 1925 on the Omaha market of the different species was as follows: Cattle, $13.25; hogs, $9.85; sheep, $13.05.

* * * * * * * *

"The Secretary found a maximum for the other items of costs of carrying on the market agencies in substantially the same way that he arrived at the salesman cost. He refused to be bound by either the lowest cost he found, or by the highest, or by any mathematical average. He found the cost which he deemed normal and reasonable, well below the highest and well above the lowest. As to each item there is proof that some agencies are getting the thing done in actual operation well within the maximum fixed. In each instance there are some agencies that are not keeping within the maximum. Necessarily so. Undoubtedly, if rates were fixed so high that certain profits were assured to all regardless, the agencies would multiply much faster than live stock could be brought to the market, and an endless chain of rate increases would be necessary. It is not the purpose of the regulation to bring this about. The exchange is an unincorporated association composed of the agencies, and we see no reason why reasonable limitations may not be put upon the number of its members."

V.

APPELLEES IN ASSERTING THAT THE PRESCRIBED RATES COVER COSTS AND PROFITS AS FOUND BY THE ORDER, NEGLECT TO CONSIDER THE ERRONEOUS CONFUSION OF "COST" WITH "PROFIT" AS POINTED OUT BY THE DISTRICT COURT AND THE DISALLOWANCE OF INSURANCE AND EXCHANGE EXPENSE.

In this section of Appellees' Brief it is claimed that the rates would yield a "liberal margin" amounting to $112,033.79 over the reasonable cost and profits found by the Secretary (Brief 67). If for the purpose of argument only we adopt the Secretary's theory of "hypothetical cost" and drastically reduce costs for those types of expense which he claims the conditions of business tend to increase, it yet remains true that the rates as prescribed fail to cover the so-called reasonable costs and profits if amounts erroneously excluded under the application of his own theory are added to these costs. This appears from the following calculations:

Total of reasonable cost allowed (1931 business) (Petitioner's Ex. No. 7)	$1,322,253.68
Insurance or risk expense erroneously eliminated (Govt. Ex. 115, p. 27. Compare Petitioner's Exhibit 7)	19,918.63
Livestock exchange expense eliminated (Govt. Ex. 115, p. 24)	21,713.64
Management and uninsurable risk expense (held erroneously eliminated. Opinion Lower Court, Otis J., R. 150)	101,432.82
Total "reasonable cost"	$1,465.318.77

Yield of prescribed rates if existing buying rates are maintained (Petitioner's Ex. No. 1)	1,423,774.70
Deficit representing failure to meet reasonable cost plus items above indicated.....	41,543.98

The Court in its first opinion (R. 150) stated that the Secretary had erroneously confused the cost of management and carrying uninsurable risk with profit, but that the failure to separate these items and include both was compensated for by the cushion or spread in the yield of the rates above the total of reasonable costs allowed. The statement of the Court was

> "In truth the rates fixed had an additional spread above all costs, including the two specified (management and uninsurable risks) which spread allows and provides for the alleged omission".

It must be conceded that insurance and exchange expense is incurred as incident to joint operations. Such expense would not be affected by the hypothetical elimination of all cost incident to competition and should be included in the costs allowed under the order's own rate making theory (FF. 99, R. 78). Although fully supported from a factual standpoint, covered by the assignments of error and conclusive of the invalidity of the order, this point was not emphasized or stressed by appellants' brief because of the broader and more fundamental questions presented by the record. These questions involve, as appellants view them, assumptions of the legality of administrative action and authority departing from all past economic, political or judicial precedent and rest on bases inconsistent not only with the Act granting jurisdiction but with the fundamental

requirements of our American system of a competitive economy. Appellants, therefore, do not permit themselves, even temporarily or for the purpose of argument, to admit the validity of the theories advanced and presented by the record in this case for the attention of the Court.

VI.

THE SECRETARY'S FINDINGS AS TO COSTS ARE UNSUPPORTED BY SUBSTANTIAL EVIDENCE, MUCH LESS THE WEIGHT OF THE EVIDENCE.

(A) Salesmanship.

In this section of their brief appellees object to the fact that appellants have pointed out that the costs, denominated as "reasonable" by the order of the Secretary, are hypothetical in the sense that they do not reflect the actual experience, as shown by the evidence, of any market agency or group of market agencies in business in Kansas City. This statement is made in appellees' brief:

> "As will be explained later in this brief, the Secretary had before him evidence as to abnormal conditions in the Kansas City stockyards which compelled him to reject the average cost of salesmanship to all market agencies, or the salesmanship costs of some 'typical or representative' market agency as a test of reasonableness.
>
> "To the extent that appellants use such epithets as 'hypothetical' for the purpose of suggesting that no salesman in the Kansas City market has attained or can attain the performance figures selected by the Secretary, or that the salary figures which he used were unreasonably low, appellants either ignore or distort the facts" (Br. p. 77).

1. Appellees do not contend that any cattle salesman reached the Secretary's salesmanship standard.

It will be noted that the brief of appellees contains no statement that any salesman operating in a reasonably efficient manner ever did sell at Kansas City the volume of cattle which the Secretary prescribes as the goal of salesmanship achievement. The statement is made that "under circumstances permitting reasonable efficiency" a salesman can sell the volume of livestock which the Secretary has associated with his salary figures (Br. 77). Appellees should observe that the opinion of the statutory court (R. 164) applies the term "hypothetical" to the so-called reasonable costs found by the Secretary and points out in the light of the admissions contained in defendants' answer and the facts in evidence that the order does not undertake, as in the *Tagg* case, to ascertain "typical" or "normal" costs, but seeks to speculate as to what might be the cost sustained under an assumed condition existent when the competition demanded by the Packers and Stockyards Act has been eliminated. That this is the effect of the opinion of the lower court, in entering a decree which can only be sustained upon the theory adopted by the Court, namely, that the Secretary was possessed of "almost dictatorial power", is beyond cavil.

2. Appellees without supporting evidence claim abnormal conditions related to entire Kansas City market.

Appellees try desperately to escape from the findings of fact so made by the Court and from the admissions contained in their own answer and yet, as above pointed out,

seek to justify the conclusions reached by the order on the statement that "abnormal conditions in the Kansas City stockyards" compelled the rejection of actual costs and prevented the ascertainment of costs on the basis of the actually sustained cost of a typical or representative agency or group of agencies. We have pointed out in our brief that in group rate making under the Interstate Commerce Act the Interstate Commerce Commission at the time of the passage of the Packers and Stockyards Act had adopted a settled policy of utilizing the actual cost experience of typical and representative carriers in the determination of reasonable rates.

3. Government relies on highly speculative opinion evidence as against actual performance.

The brief next refers, as supporting the Secretary's order, to the testimony of three witnesses, given at the first hearing and applicable to the year 1929, that salesmen could reach the performance standards set forth in the order. Appellants' Brief (pp. 119-125, incl.) discusses this so-called opinion evidence and clearly points out the lack of probative value of such evidence even from an hypothetical standpoint. Reference is made to the testimony of the witness, W. T. Angle, Manager of the Producers Commission Association, and a salesman, W. B. Ecton, employed by that association in 1929. Appellees attempt without success to reconcile the statement of the witness Angle, who said he had never sold "any livestock to speak of" himself, to the effect that a salesman could handle efficiently more than 1,000 single-deck cars of livestock in a year, with the fact that his association, which he testified was efficiently managed, reached only the average

in car load equivalents of 432 cars per salesman. Appellees, in justification of Angle's and Ecton's testimony when compared with the salesmanship performance of the agency which employed them of 432 cars in 1929, say:

> "Ecton's testimony can be taken as indicating that the firm (Producers Commission Association) did not receive a sufficient volume to enable any of its salesmen to exercise his fully ability" (Br. 84).

Examination of the record discloses that the total number of head of cattle sold by this association in 1931 was 70,071 (Gov. Ex. 115, p. 65[2]). An official publication of the Department of Agriculture entitled "Crops and Markets" (p. 12)[1] gives the receipts of cattle and calves at all public stockyards in the United States posted by the Secretary under the Packers and Stockyards Act in the year 1931. These public stockyards were 65 in number. Receipts of cattle at 46 out of the 65 public stockyards during that year were less in total number than the number of head handled by this one agency during 1931 in respect of which appellees contend there was not sufficient volume to permit Mr. Ecton, the witness, although he was the head salesman, to exercise his full ability in the efficient sale of livestock.

4. Testimony of witnesses as to salesmanship performance is misrepresented.

Appellees' brief refers to the testimony of Charles Vieregg (Br. p. 87), of the W. M. Leitch Sheep Commission Company. The short quotation from this witness's testimony, contained in the brief, indicates that Mr. Vieregg

[1]This publication is not included among the exhibits certified to this Court. Its nature renders it a proper subject of judicial cognizance.

believed that he and his partner, Mr. Stover, with the help of additional yard and office forces could probably sell more sheep than they were receiving. Their actual receipts, as shown by the record, were less than 60% of the hypotheical standard set up for the determination of costs in respect of selling sheep by the Secretary.

The quotations from testimony of this character, which are found in appellees' brief, indicate either a purpose to further confuse the Court as to the method of accounting employed or a desire on the part of the appellees "to have their cake and eat it too." The hypothetical performance standard adopted by the order requires not only the sale of 29,000 head of cattle or 250,000 head of sheep per salesman per year, but also the performance by the salesmen of a large part of the yarding, office and country appraisal work in connection with the efficient selling of this livestock. Clearly, such testimony as that of the witness Vieregg, quoted in the brief, does not support appellees' contention. It is an explanation that does not explain but, when properly understood, points directly to the fundamental defects of the method followed by the order in the determination of reasonable costs.

The same situation is true with reference to the quotation next appearing in appellees' brief from the testimony of James C. Swift, of the Swift & Henry Livestock Commission Company, a market agency which appellees state sold 138,133 head of cattle and calves and employs 6 cattle and calves salesmen. It will be noted, in the first place, that the volume of business of this agency was probably in excess of the total annual volume of receipts in 1931 at more than 50 of the 65 public stockyards throughout the United States under the supervision of the Secretary, and yet this agency

apparently did not have, in the judgment of the Secretary, a sufficient volume to give these 6 cattle and calves salesmen a full opportunity to display their ability and reach the hypothetical standards set up by the order. The quoted testimony of Mr. Swift is that, without additional expense for salesmen, if receipts could be increased on other than peak days or at times when market volume was low, no added expense for salesmen would be necessary.

5. Appellees refuse to recognize effect of peak receipts on operation of business.

This statement, which was repeated over and over again in the testimony of many witnesses, is apparently an insoluble riddle to appellees, but is perfectly understandable to every operator in the business. As pointed out in appellants' brief (p. 29), by reason of climatic conditions and other facts which neither the Secretary nor any one else can control or regiment, the Kansas City livestock market is subject to very great and somewhat abnormal seasonal variations. These variations are much greater than those at other markets. The average per day receipts represented only 17.9% of the highest day receipts in the year 1931 (Gov. Ex. 116). A finding of fact contained in the order states that it is impracticable to employ men sufficiently skilled to sell livestock on a daily, weekly or monthly basis (FF. 79, R. 61-62). It is, therefore, apparent that the load factor, which constitutes the principal element in augmenting unit costs in all utility and public service operations, is very high in respect to the operation of market agencies at Kansas City.

At another point in the brief, again presumably referring to the testimony of the witness Vieregg, appellees say that this witness testified that "his firm could handle twice its present volume of business without increasing its selling force" (Br. 91). What the witness did say in answer to leading questions was:

> "If we had twice as much, the chances are that we would do our selling just the same, but we would necessarily have to hire more men in the yards. The chances are that we would have to hire more people in the office, because that would take us away from our office if we had just twice as much under those conditions.
>
> "As to how many carloads or head of sheep a salesman can handle efficiently in an ordinary year, I can answer that, 'how many lawsuits can a lawyer try in a year?' There are a thousand things that would enter into it. Some days we work all day on a load. Some days we would sell ten easier than we could sell one. There is no way of getting at that question at all as I can see" (R. 454).

Appellees again referred to the testimony of the witness Swift (Br. 92) and say that he testified that "with a normal flow of business his agency could handle one-third more volume with practically no added expense". Examination of the testimony of the witness Swift discloses that he was careful to point out the influence of peak receipts upon the operation of his business. This witness said:

> "It is not practicable on account of variations in receipts to regulate personnel so as to meet the peaks of business without keeping your organization intact when receipts are at a point below the peak. Our

clientele expects certain men to sell their fat cattle, and grass steers, and fat steers, certain men to sell their stockers, certain men to sell their calves and butcher stuff. We do not know whether they are going to come in the day we have 7 loads or 70 loads, but when they do come it is with the understanding that the man who has been selling their livestock for them will be there on the job. We have to maintain the equipment, the volume of receipts from one day to another. It is not like the volume of business of the packing house where they have a mob assembled outside the gate, crowd and pack, in order to get a day's work. Our men are skilled men, trained in their work, and familiar with the operations and needs and desires of our customers" (R. 1036).

6. The finding or conclusion that salaries and personnel had not been reduced is unsupported by any evidence.

Appellees here refer to paragraph 113 of the Secretary's order (R. 82) in which it is stated that "the general impression" was gained from the record that the market agencies were attempting to maintain their personnel and the salaries thereof in 1931 at levels obtained in the more prosperous year of 1929. The statement is made that the evidence supported the conclusion. The record references given in the brief do not support or confirm this statement. In each instance reference to the record citations made disclose that expense had been reduced both as to personnel and other categories of expense wherever possible. One record reference given is Record page 729. The first statement on this page of the witness is as follows:

> "In the case of my own firm every item of expense that we carry on our ledger, country trips, postage and stamps, advertising, and market information, all show a big decrease in 1931 and 1932 as compared with 1929".

Reductions in the number of salesmen are then mentioned. Apparently the desire of appellees was simply to give record references regardless of whether or not they served to confirm or refute the conclusion or impression suggested by the Secretary and incorporated in the brief.

7. Appellees' attempt to cite proof of inefficiency has been unsuccessful.

Appellees' brief next adopts the expedient of reducing receipts of livestock by the market agencies to "carload equivalents" and then expressing as to various agencies the variations in the volume of such receipts, making comparisons with the number of salesmen employed (Br. 97). This constitutes an adroit but misleading method of creating a false impression of excessive variations in performance. As pointed out in appellants' brief many natural factors produce these variations. In the first place, as stated in the order of the Secretary, livestock is no longer sold in carload lots, the average sale transaction amounting to 5.22 per head in respect of cattle and calves. And, as pointed out elsewhere in appellees' own brief an increasingly high proportion of the livestock received is delivered by truck. Hence appellees have apparently gone to the trouble of reducing to carload equivalents livestock consigned to the various firms in order to create a false impression in the mind of the reader of the brief.

Next, appellees attempt to discountenance by bald statement, unsupported either by evidence or by findings of evidentiary fact, the testimony of all the witnesses as to provident and economical management of their respective businesses in employment of personnel. Unsupported statement contrary to all evidence is apparently expected to induce the belief that there were findings of fact to the effect that all the market agencies at Kansas City were abnormal in that they employed salesmen unnecessarily and in complete disregard of their own financial well being. Realizing apparently that such statements do not constitute argument any more than they constitute recitals of fact, appellees then attempt by distortion of specific evidence to indicate that in one instance, namely, the operation of the business of John Clay & Company in 1931 the salesmen employed by that firm came within 2,432 head of reaching the hypothetical goal of achievement adopted by the Secretary (R. 102). Despite the fact that six separate individual salesmen were employed by this appellant during 1931 to sell cattle, appellees' brief states "taking the year as an entirety, 4⅞ salesmen were required to sell this number of cattle and calves (117,345)" (Br. 101)[1]. This statement is based on a complete shift in fundamental assumptions. One of these salesmen was James Reid, head salesman for John Clay & Company at Kansas City, who received a salary of $12,000 per year. The questionnaire (Government Exhibit 115-B) disclosed that he devoted approximately 40% of his time to the actual selling of livestock in the yards and the remainder of the time to related services including a certain amount of time devoted to yarding. It discloses that two extra salesmen were employed,

[1]See Appendix C to appellant's brief.

one for a period of seven months and the other for a period of four months and three regular salesmen. Under the Secretary's formula the entire compensation of such a man as James Reid reduced to a basis of $4,000 a year was supposedly to be included as salesmanship expense. In this instance, however, appellees do not follow that formula but would drop entirely from consideration the compensation paid to James Reid by John Clay & Company for all that portion of his time not expended in the actual sale of the livestock in the stockyards. When the character and experience of the personnel of the owners of this agency was referred to at the hearing before the Secretary, counsel for the Secretary conceded that John Clay and his associates, who devoted their own personal attention to the management of the affairs of this agency, were exceptionally able, experienced and competent operators of market agencies (R. 301). Clearly, the judgment of these practical operators of this agency considered it necessary to hire six salesmen to sell 117,345 head of cattle and calves. Under any basis of calculation, however absurd, it is apparent that the goal of achievement postulated by the order was not attained. Under any reasonable consideration of the facts it was not even approached.

Next appellees refer to the Moffett Livestock Commission Company. Reference is made to the fact that a witness connected with this firm testified that three salesmen on the Monday preceding the day of his testimony had 34 cars of cattle to sell and succeeded in disposing of all except ten head. From this appellees draw the conclusion that the three salesmen sold more than twice as many cattle "as would be considered a reasonable day's performance under the Secretary's finding" (R. 102). Here, again, is exposed

the refusal of appellees to consider the actual reality of the situation which confronts the operators of these businesses. The average day's performance under the Secretary's finding of 29,000 head per year as to cattle and calves amounts to 145 head per day. As shown by appellants' brief and the evidence in the record (Appellants' Br. p. 30) the average per day receipts amount to only 17.9% of the highest or peak day's receipts (Gov. Ex. 116). This necessitates in respect of these salesmen a selling performance on peak days of more than five times 145 head, or over 700 head of cattle and the consummation of more than 145 sales per day per salesman.[1] This, of course, is a number of head greatly in excess of the performance "on the preceding Monday" of the salesmen of the Moffett Livestock Commission Company to which appellees refer (Br. 102).

The next reference is to the operation of the Bowles Livestock Commission Company (Br. 102). It is said that two salesmen disposed of 45,973 head of cattle, but that one of these salesmen spent approximately 20% of his time on other duties. Manifestly, any salesman could do this with the variation of receipts to which the market is continuously exposed and do it without affecting in the slightest degree the time devoted to actual salesmanship. Furthermore, under the Secretary's formula this 20% of time not devoted to salesmanship, but expended upon related duties, was considered a necessary part of the hypothetical salesman's performance and accounting was presumably had on that basis (FF. 115, R. 84). On this proposition appellees desire "to blow hot and cold," contending at one moment

[1]This would also assume the absolute even distribution of livestock among all the salesmen at the market in peak days—a situation unattainable without elimination of competition.

that all salesmen's compensation is to be considered under the heading of "salesmanship" irrespective of the distribution of their time to various duties, and on other occasions, where it serves their purpose to better advantage to distribute the time and compensation among other functions, to follow that method. Manifestly appellees cannot ride both horses at the same time.[2]

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[2]Attached to Appellants' brief as "Appendix C" is an analysis of Government's Exhibit 115B containing the information given by that exhibit as to the number of salesmen connected with each market agency for the year 1931 shown to have been full-time salesmen and those who were extra salesmen employed for only a few months. Because appellants assert that extra salesmen were employed in the peak season, it is charged by appellees that "This is a grotesque and flagrant distortion of the record because Government Exhibit 115B does not show that extra salesmen were employed at peak seasons." The assumption that they were so employed was fully justified.

In the footnote (Br., p. 111, footnote 36) reference is made to certain work papers in an attempt to make the Court believe that if these work papers were in the record, it would show that the extra salesmen were not employed in the peak periods. Appellees say: "They do not feel justified despite appellants' distortion of the facts in referring to the facts contained in these work papers * * * because these exhibits were not certified as part of the record." This assertion of appellees is, in itself, a misstatement and misrepresentation of the record. At the page of the record (R. 825) to which appellees refer, there appears a reference to "Government Exhibits 114-1A to 107A." No statement appears in the record of any kind or character as to what these exhibits were. ~~Possibly they were work papers; if so, they were never offered or introduced in evidence at the hearings and did not constitute originally a part of the record before the Secretary and certainly constitute no part of it now. If the Secretary considered them he did so improperly and without regard for the essential requirements of a fair hearing.~~

Reference is then made in this footnote to the fact that one Gerald Haggart ceased working for the Haggart Livestock Commission Company and was employed by John Clay & Company in 1931, with the statement that "Mr. Haggart may have been with his own firm during the peak season in 1931." Mr. Haggart was a cattle salesman. (Govt. Ex. 115B). The peak season in respect to cattle is, as shown by the Government's statistical exhibits, as well as by all the evidence, in the fall of the year (Govt. Ex. 120, A, B and C).

The result, however, is unimportant. It is too plain for argument that the owners of these agencies, in the financial position in which all of the agencies were placed during the period referred to, as disclosed by the audits of the Government accountants introduced in evidence, were not unnecessarily employing special or extra salesmen unless conditions of their business actually demanded it from the standpoint of efficiency of salesmanship. The labored attempt of appellees to induce the Court to give credence to the unsupported statement that the fact that "a firm hires a salesman, does not show that a salesman is needed to sell livestock" (Br. 114), is so palpably contrary to the evidence and findings and to ordinary common sense as not to warrant further consideration.

Certainly, Mr. Haggart, one of four brothers, originally connected with Haggart-Wilson, did not work for John Clay & Company in the spring and Haggart-Wilson in the fall of the year. The natural and correct inference is that his employment by John Clay & Co. commenced after the connection with the firm of Haggart-Wilson ceased. Reference is then made by appellees to one Ira Kimmons, a salesman employed for six months by Crider Commission Company. Again, Government Exhibit 115B shows that Mr. Kimmons operated his own agency for six months within the year 1931 and went out of business. He then worked six months for Crider Commission Company. The stipulation as to the condition of the business of the agencies the following year appearing in the record shows that Mr. Kimmons was not in business in 1932. It therefore clearly appears that he, a cattle salesman, commenced work for Crider Commission Company during the summer and that he worked during the peak season for this agency. A reference is also made to one C. M. Davis, a cattle salesman, who was connected with the agency of Jefferson-Lowry & Davis in 1931. This agency went out of business about the middle of the year 1931 (Govt. Ex. 115B, Stipulation, R. 196). He was then hired by the firm of Wright and Baucus (Govt. Ex. 115B). He worked during the peak season and, yet, appellees say "Here again it may be argued that Mr. Davis was employed not because help was needed in the peak season but to obtain the volume of business which he controlled." Assertions of this character clearly support, not appellees' unwarranted speculations, but the contentions of appellants.

8. Appellees improperly disregard the true criteria of efficiency of salesmanship.

Appellees challenge the statement that "price, not volume or speed, is the test of the salesman's ability and value" (Br. 116). It is said that this statement assumes that a high volume performance by a salesman is necessarily accompanied by a low per head price realization, while the Record indicates otherwise. The only testimony quoted by appellees on this point is that of the witness Bradshaw (Br. 118). This witness, however, definitely said that "There is a point at which the efficiency of a salesman is very materially reduced—when he has so many loads of cattle that he cannot give any of them proper attention, proper care and proper sales ability" (R. 543). The witness was a salesman for the Witherspoon Livestock Commission Company. Five cattle salesmen were employed by this agency (Government's Ex. 115-B; see appellants' brief). Upon the hypothetical performance standard adopted by the Secretary, this agency having handled 73,218 head of cattle and calves in 1931 (appellants' brief; Appendix B), should have employed not to exceed three salesmen. In fact, the standard would only allow for the employment of two regular salesmen and one extra or part-time salesman. Frank Witherspoon, one of the owners of this agency, testified that all possible effort was used "to econonize in every feature of the operations and with respect to all classes of expenses in 1931" (R. 918). He also described the effect of the peak load on their particular business. He testified:

"During the week of October 5, 1931, the Witherspoon Livestock Commission Company received on Monday of that week by rail 2,312 cattle and calves; Tuesday, 1,005 cattle and calves; Wednesday, 425 cattle and calves; Thursday, 88 cattle and calves; and no rail shipments on Friday. * * * I have referred to the week of October 5, but during the week of October 12, the same year, the situation was more difficult on account of the fact that the firm received on Monday of that week 2,856 cattle and calves; the next day there was a very abrupt drop in business to 957 head of cattle and calves; on Wednesday, 250 cattle and calves; on Thursday, 166 cattle and calves; and Friday, 68 cattle and calves" (R. 927).

He said: "This peak load we have in the fall of the year makes it imperative for us to keep an organization together to handle it. I mean what we would call a skeleton organization, the salesmen and the talented part of our force" (R. 922).[1]

This section of the brief develops a very interesting contrast in the treatment of the evidence when compared with succeeding sections. The statement is made that John Clay and Company and Swift and Henry Commission Com-

[1]Upon the Secretary's theory, each salesman in that firm would have been required to sell on peak days, if they completed the work, approximately 1,300 head of cattle and calves. If sales were made at the average in number of head of the market as a whole, each of the super-salesmen during the day's comparatively brief period of active selling would have been required to consummate and carry through more than 200 separate sales transactions. The absurdity from a purely mechanical standpoint of such expedition in selling is manifest. The requirement that it be done comes directly within the condemnation of the testimony quoted by appellees and could serve only the interest of the packers who buy the live stock, inasmuch as it would compel these salesmen, as one witness for the Government pointed out, to simply "get rid of the cattle" and accept the first bid received (R. 327).

pany were the agencies having the highest average per salesman performance as to cattle and calves, and were also among the highest in per head realization per cattle of the same weight class (R. 116). In discussing later in the Brief the subject of business getting and maintaining expenses (Br. 129), which include all expenses incident to securing proper information as to the quality and character of live stock sold, these particular firms are inferentially condemned as being among the highest in percentage of amounts expended. The result of this contrast is simply to support the contention of appellant that the expenditures for business getting and maintaining eliminated by the Secretary were essential to adequate and efficient selling service, and to expose the inconsistency of appellees' statements in different sections of the Brief.

(B) BUSINESS GETTING AND MAINTAINING.

Appellees at this point in their brief again attempt to refute the statement of the District Court that the method employed in the *Tagg Brothers* case was not followed by the order in this case. The argument is tantamount to an assertion that both the District Court and this Court were misled by the record in the *Tagg Brothers* case into the false and mistaken conclusion that in each instance the Secretary's cost findings were supported by evidence which showed that certain agencies were able to perform the service at lower cost than the Secretary found reasonable.

The claim is made that there has been no attempt by appellants to demonstrate that the business of any individual firm requires the expenditure of an amount in excess of the amount allowed by the Secretary to cover all the costs

classified as business-getting and maintaining expense (Br. 124). The most cogent proof of the necessity of these expenditures is that the expenditures were made and that when the total of aggregate actual salary and non-salary business-getting and maintaining expense for all firms as set up in Government Exhibit 115 is considered, we ascertain that the aggregate actual non-salary business-getting and maintaining expense for all agencies was $136,538.09 greater than the amount the Secretary's allowance would have produced and that the total salary expense found by the Government accountant as business-getting and maintaining salary expense (Gov. Ex. 115, p. 20, col. 9) amounting to $188,392.44 has been eliminated. It will be noted that the brief devotes but one sentence to the elimination of this item of $188,392.44 of business-getting and maintaining salary expense (Br. 128).

The claim, upon the basis of eliminating all salary expense, is made that a few agencies spent less for other business-getting and maintaining expenses than the product of the Secretary's reasonable allowance. While appellees do not identify the particular agencies there may be a few agencies as to which the original audits fail to disclose unbooked costs or in respect of which the cost distributions between functions were inaccurately made where this is the case. Appellees do not claim, however, that any of these agencies were normal or typical agencies.

The argument of appellees in this section of the brief is to the effect that while the appraisal of livestock prior to shipment and the advice and counsel of producers and salesmen is valuable to the producer of livestock and a part of the efficient selling service, inasmuch as all shippers do not request such services it is improper to include the actual

cost incident thereto (Br. 127). On the basis of this argument if a railroad company on the request of a passenger renders the special service of delivering his ticket and Pullman reservation at his office instead of requiring him to secure it at the station, the expense of the railroad in the rendering of this special service should not be included in the general operating expense for rate-making purposes. Likewise, if railroads, as the result of competition, are required to make door to door delivery in order to serve the convenience of shippers such expense would not be includable as an operating expense for rate making purposes unless all shippers paying the rates requested or required the service. Innumerable illustrations can be given of special services designed to promote the convenience of the public rendered by public agencies. The managements of the various public agencies deem it necessary to make these expenditures incident to the rendition of their service. Appellees question the propriety of the judgment of the management. And the argument advanced is not that the expense is "excessive" or "unnecessary" but non-includable as actually incurred because, as appellees say:

> "Every item of expense thus incurred by the commission men is incurred for the purpose of inducing a particular shipper to give his business to a particular firm" (Br. p. 132).

It is for that purpose that practically all service of this character is rendered. If such a charge condemns the expense incurred and justifies hypothetical treatment, then all expenditures made by a public agency are exposed to the same hypothetical treatment in rate making procedure. Appellees say:

> "Such services may aid producers in marketing their livestock but it would also aid the producer if the commission firm would furnish free of charge the feed necessary to feed the livestock" (Br. 132).

Is it to be presumed from this statement that in the event that as a portion of the stockyard service rendered by these market agencies the livestock handled was fed by the agencies to the extent necessary to properly maintain its condition, no expense therefore could properly be included for rate making purposes? The absurdity of such a contention is apparent without argument.

Appellees point out (pp. 129, 130) variances (explained in appellants' main brief) between the percentage of revenues spent for the costs classified as business getting and maintaining non-salary expense by different agencies. It is shown that the Producers Commission Association, a cooperative, of their total revenues, spent 24½% thereof for that purpose (Br. p. 130). It will be recalled that W. T. Angle, manager of this association, is the witness upon whose opinion testimony the appellees place such great reliance upon the question of salesmanship cost. They also produce a lengthy quotation from his testimony at page 130 of the brief, attempting to make it appear that the costs in the case of his agency were reasonable and within the limit of the reasonable cost covered into the rates by the order. Manifestly such was not the case because the Secretary only allowed 10% of reasonable cost—not 24½% of gross revenue for this purpose and a large part of the deficit of more than $20,000 incurred by this agency, as pointed out by appellants, under the Secretary's prescribed rates, would have been the result of the arbitrary elimina-

tion of more than 50% of the actual cost incurred under the classification of business-getting and maintaining.

The brief quotes from the testimony of the witness C. A. Stuart and says that on the basis of the analysis of the expenditures shown in the order for his firm he considered that 2.8% of his gross revenues from commissions would represent his out of pocket soliciting expenses for 1931 (R. 1055, Br. 130). This witness testified that the actual soliciting or business getting expense sustained by his firm would not exceed 2.8% of his gross revenues (R. 1056). This represented, however, a very small part of the total expenditures classified by the Government accountant as business getting and maintaining expense. Singularly enough, although they devote many pages to business-getting and maintaining, appellees utterly fail to mention the character of the expenses included and attempt to let the Court believe it is all advertising expense. Mr. Stuart pointed out, and his testimony was unchallenged (R. 1054) that of a total of more than $3,000 of expenditures of his firm so classified, less than 15% "related to advertising or soliciting". This testimony when understood exposes the lack of integrity of the procedure and method of accounting and cost finding adopted and followed by the order.

Similar expositions of the true facts could be given in connection with the testimony of other witnesses referred to by appellees and with respect to which only detached excerpts are included in the brief without any explanation of the context or the application of the testimony to the facts. Appellees quote from the testimony of the witness F. E. Mollin given at the first hearing (Br. 141). It will be recalled that that hearing related to conditions obtaining

in 1929 and that elsewhere in the brief appellees make the claim that it was a period of "great prosperity". Yet the quotation from this witness commences with the statement "The livestock industry today is in the dumps and cattle are losing money" (R. 248). Several other live stock producers testified and each of these witnesses stated that the services classified as business-getting and maintaining expense by the Secretary were of the utmost value and importance to them (R. 279, 472).

Certainly appellants are not to be prejudiced by testimony which they have had no opportunity to refute and in respect of which no findings of fact have been made in this case (Br. 149). And yet appellees refer repeatedly to the Record in the so-called *Denver* and *Chicago* cases.

Appellees include in their brief (Br. p. 145) a lengthy table in which it is asserted a comparison is made by firms for actual expenditures for business getting and maintaining and the total allowance for such expense under the Secretary's order. It will be observed that 18 of the 61 firms included in this purported comparison are not presently engaged in business. The table purports to show that for 10 agencies out of the 61 the actual expense for business-getting and maintaining was less than the total allowance under the Secretary's order.

Of these ten agencies, four have discontinued business.[1] One has since been reorganized,[2] and each of the remaining agencies handled a relatively small amount of business, was operated by either one man or by a closely-held partnership, or under such conditions as to suggest the failure to book

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[1]No. 11, L. B. Andrews Livestock Commission Company; No. 37, Link Fasken Commission Company; No. 66, W. P. Peed Livestock Commission Company; No. 72, Welch Livestock Commission Company.

[2]No. 66, Robinson-Hoover Commission Company.

or record costs of this character actually incurred.[3] None of the agencies so included was one either of the eleven or twenty-one agencies referred to as efficient firms of large volume by the Secretary's order (FF. 86-88; R. 68-73).

(C) THE SECRETARY'S ALLOWANCES FOR YARDING AND OFFICE SALARY COST ARE NOT SUPPORTED BY THE EVIDENCE.

Appellees insert a table in their brief (Br. 151) which purports to compare the Secretary's finding as the unit cost of yarding salaries with the "weighted average unit cost actually incurred" by appellants. It is stated in this table that the unit cost as to cattle and calves amounted to $0.075 per head and the weighted average of unit cost actually incurred as shown by Government Exhibit 115 and 115-B amounted to $0.0704 per head. If we refer to Government Exhibit 115, page 7, column 8, we find the yarding salary unit cost set out and it appears that instead of the weighted average unit cost actually incurred amounting to $0.070 per head the figure is $0.0963 per head. Similar discrepancies exist to mislead the court in respect to the comparisons made concerning sheep and hog costs. The brief infers that objection may be made to the Secretary's findings as to yarding salaries on the ground that the findings were too low. The objection is that the findings were not in accord with the Government's own testimony and that it does not promote proper understanding of the case to conceal, because the record is voluminous, the actual fact about the matter.

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[3]No. 9, John M. Nichols; No. 15, Elliott-Swain Livestock Commission Company; No. 61, Ham Knighton Commission Company; No. 65, Moffett Commission Company; No. 76, Greer & Company.

Another table is inserted attempting to make the same comparison with respect to office salaries. In this table it is claimed that as to cattle and calves the reasonable unit costs were $.0525 per head while the "weighted average unit cost" as shown by Exhibit 115 and 115-B was $.0480 per head. In the same exhibit (Gov. Ex. 115, p. 7, col. 11) appears what the Government's accountants claim to be the weighted average unit cost as developed in Exhibits 115, 115-B. Instead of $.0480, as stated in appellees' brief, the figure is $.0823 per head or almost twice as much. Similar inaccuracies favorable to appellees and distorting the evidence or preventing proper understanding as to sheep and hogs appear in this table (Br. 152, Gov. Ex. 115, 115-B). Appellants in their brief pointed out variances between the cost table set up as evidentiary findings in the Secretary's order and the cost tables appearing in Government Exhibit 115. Appellees answer with the statement that the asserted variance does not in any way affect the validity of the Secretary's findings; and assert that appellants, in the face of this evidence, do not contend that the Secretary's findings as to reasonable unit cost of yarding salaries and office salaries are unreasonably low. It is true that it makes little difference to appellants whether the costs eliminated relate to yarding salaries or office salaries or salesmen's salaries, if the effect is to produce an aggregate "reasonable cost" far below the actual cost of any agency.

Appellees made the claim in their answer when the integrity of the functional unit costs was challenged by the petition that the functional unit costs were accurately distributed in accordance with the time devoted by the various workers to the various functions of the business. They stated that such segregation of costs was "not

arbitrary and that it does not vary from the facts of the business of petitioner market agencies" (R. 142). Clearly the variances are so material between what is asserted on the one hand by appellees' brief to be the unit cost actually incurred and the same unit cost as set up in the Government's accountants' cost study as to establish conclusively the fact that both cannot be at the same time correct and accurate representations of the functional costs incurred.

Appellees apparently entirely miss the point made by appellants' brief in this connection. Comparisons of individual functional costs relating to different agencies can only be of probative value if they represent similar items of expense and if in each instance sound bases of cost distribution and allocation have been employed. Defendant's answer states that this was true and says that

> "Such functional division for the purpose of determining costs is not affected by the fact that the same men commonly perform several different functions."

The Government's accountants, upon the bases of the questionnaire and information available to them (Government Exhibit 115-B) made distributions of salary expense in accordance with the relative amount of time devoted by the different men engaged to the several functional accounts established. Appellees admit in the brief that these functional classifications were abandoned by the Secretary and that this occasioned the tremendous variations between his evidentiary costs tables and those of his accountants (Exhibit 115, Appellants' brief, pp. 150-171).

Appendix C and the notes thereto appearing at page 191 of Appellees' brief, explain some of the methods employed by the Secretary in recalculating and redistribut-

ing costs. It is here admitted that in those instances where portions of yardmen's salaries had been allocated by the Government's accountants to selling and buying, because time was devoted to these functions, the amount so allocated were restored to yarding; that where non-owner salesmen's or buyers' time had been allocated to yarding expense by the Government's accountants, these amounts were "restored to selling and buying". Naturally, this meant complete elimination of these latter amounts as costs, under the theory adopted by the Secretary in his salesmanship allowance. Having been eliminated from yarding expense, they were "restored to selling and buying" and were therefore considered to have been covered by the arbitrary salesmanship cost allowance made by the Secretary.

Thus, in the case of Firm No. 6 (Lewis & Flournoy Commission Company) we find that 25% of the time of George Rhodus, which he devoted to buying cattle and selling cattle, is added to the yarding schedule because he spent 60% of his time yarding, while the time and expense attached to the yarding service of R. H. Lewis, whose primary function was that of a cattle salesman, is eliminated (Gov. Ex. 115-B). The amounts were small in this instance but the addition of selling or buying expense to yarding and the elimination of yarding expense manifestly, inevitably, and conclusively produced a cost table, as set up in the Secretary's order, non-representative of the facts and not truly functionalized.

The degree of the non-representative character of the cost table varied as between agencies. One of the agencies referred to in the table appearing in Appendix C is Agency No. 66 (Jay D. McCormick Commission Company). Here was an individual operator and, as shown by

Government Exhibit 115-B, he performed a large part of his own work. No actual yardmen worked for him for the reason that he did his own yarding. He did, however, in the course of the year pay one man $2.75, another 95c., another $19.85 and another $11.10, as compensation for bringing live stock from the unloading chutes to his pens. The Secretary's accountants included in their costs (Government Exhibit 115-B, p. 66) $141.38 to compensate Mr. McCormick for his own time utilized in the yarding of the live stock he handled. Thus the projection of these figures into the Government accountant's costs produced the total of $164.93. Under the Secretary's process he eliminates, as shown by Appendix C, all of the sum of $141.38, leaving a balance of $23.55 or .0064c. per head as representative of yarding expense in connection with the operation of this man's business.

No further reference is needed to expose the ridiculous and absurd procedure thus adopted and the fallacious character of the result produced. The Government's accountants' costs in this case were low in the first place. The Secretary's method reduced them to an extent that made them utterly non-representative of the cost item which they purported to reflect. Figures of this character scattered promiscuously through the cost tables contained in the order and repeated again and again in appellees' brief are capricious and arbitrary, and can only confuse, rather than enlighten, the one called upon to read the record. The illustration given is typical of the general treatment given this subject by appellees' brief.

An attempt is made to promote a false impression that much of the business-getting and maintaining expense is incident to the solicitation of business. The statement is

made that "the whole market territory is covered by the solicitors from the commission firms" (Br. 140). On the contrary, the findings of fact say that the rules of the exchange to which the appellants belong prohibit the employment of traveling or paid solicitors by each and all of the appellant market agencies. All the soliciting that is done is in connection with the trips to the country made by salesmen for the purpose of appraising livestock and counseling customers when business is dull at the market during the latter days of each week.

Reference is also made on this page of the record to the maintenance by the Bureau of Agricultural Economics of a daily schedule of broadcasting at Kansas City in addition to the exchange broadcast. The record does not disclose it but the appellee, Secretary of Agriculture, gave public notice more than a year and a half ago to that effect that the daily ratio broadcasting service of the Bureau of Agricultural Economics at Kansas City had been discontinued. Therefore the duplication of services referred to in appellees' brief in an attempt to impugn the necessity for certain expenditures made by the Exchange in broadcasting market reports is without merit.

VI.

APPELLEES INCORRECTLY STATE THAT APPELLANTS DO NOT CHALLENGE THE RESULT OF THE FINDINGS OF THE SECRETARY AS TO INSURANCE OR RISK EXPENSE.

The treatment by the order and appellees' brief (Br. 161) of the item of insurance it typical of the whole process

employed. Manifectly the appellants cannot, except in a brief of inordinate length, call attention to the multitudinous errors contained in the many tables of figures and calculations inserted in appellees' brief. The general result can only be depicted by a method illustrative of what has actually occurred and of what the tables really are. We have hertofore pointed out that, despite the references made to Government Exhibits 115, 115-B, 114-1 to 107, the specific figures used in these tables cannot be related to the actual cost calculation of the Government's accountants as found in those exhibits. This is true as to insurance where the calculations are comparatively simple. Reference is made in the cost table appearing in the brief (p. 163) to the Secretary's total reasonable allowance for insurance as amounting to the sum of $21,067.66 and to the book expense and accruals of insurance shown by "Government Exhibit 115, page 27", as "$22,265.47". Reference to Government Exhibit 115, page 27, shows the following items of insurance expense:

Furniture and fixtures...	$ 911.76	(Col. 1)
Market bonds	6,335.02	(Col. 4)
Employees' compensation insurance	7,843.10	(Col. 5)
Mortgage and theft insurance	9,893.50	(Col. 9)
Forgery and miscellaneous insurance	2,142.42	(Col. 10)
Public liability insurance .	9,916.90	(Col. 11)
Total insurance cost as per Govt. Ex. 115	$37,041.70	

57 by accountant.

It will be observed that the figure given by reference to this exhibit in appellees' brief (p. 163) ($22,265.47) is $14,776.23 less than as stated ~~in~~ appellees' ~~brief~~. This distortion and other distortions involving departures from costs found by the accountants destroy the applicability of this table. Part of the difference in the insurance expense might be explained by the statement appearing on page 161: "The Secretary did not include in his computations an allowance for public liability insurance and the record supports his action." Three of the citations to the Record simply have to do with testimony involving the cost of the public liability insurance. The last reference (R. 285) is to the statement of an insurance man who claimed that he had not written any public liability insurance for market agencies and, when questioned about it by Government counsel, presumed that it would relate only to damages suffered by the public as a result of animals escaping from the yards. No reason is given in the Secretary's order for the elimination of $9,916.90 of this expense for public liability insurance set out by his accountant in this exhibit (Gov. Ex. 115). But, even with that elimination from the Government's accountants' cost, there yet remains a discrepancy of approximately $5,000 between the figures set up in the appellees' table and the evidentiary support for this item as set forth by appellees (Br. 163).

VII.

THE APPELLEES' CONTENTION THAT THE ORDER CONTAINED LEGALLY SUFFICIENT FINDINGS AS TO THE UNREASONABLENESS OF EXISTING RATES IS WITHOUT MERIT.

As pointed out in appellants' brief, the order of the Secretary contains only an ultimate finding as to the unreasonableness of existing rates unsupported by any evidentiary statement determining the yield of those rates to agencies, either as individuals or by groups. In fact, the answer of the appellants as well as the evidence of the Government accountants indicates that these accountants were unable to determine accurately the revenues to be derived from a rate structure such as the existing rate structure predicated on a headage consignment basis which the order declared unreasonable.

Reference is made to ultimate findings contained in the order and set forth in the form of conclusions in the attempt to make it appear that these findings constitute evidentiary findings establishing an "abnormal competitive condition in the Kansas City market". As pointed out by appellants, the findings are utterly insufficient and the conclusions are not in accord with the evidentiary findings contained in the first 113 paragraphs of the Secretary's order.

VIII.

APPELLEES FAILED TO MEET THE ALLEGATIONS OF THE PETITION DISCLOSING PROCEDURAL IRREGULARITY AND THE DENIALS OF APPELLANTS OF THE FULL HEARING REQUIRED BY THE STATUTE.

Appellees in this section of the Brief admit the allegation in the petition that Rexford G. Tugwell was not in fact "Acting Secretary of Agriculture" at the time he heard the oral arguments in the proceeding before the Secretary out of which the order arose (Br. p. 175). But it is claimed by appellees that this makes no difference because Rexford G. Tugwell was at the time Assistant Secretary of Agriculture and "authorized to perform such duties in the conduct of the business of the Department of Agriculture as may be assigned by the Secretary of Agriculture" (Br. 176). The Packers and Stockyards Act did not provide for the determination of the reasonableness or unreasonableness of market agency rates, charges and practices by the "Department of Agriculture". This legislative function was delegated to the "Secretary of Agriculture". An Acting Secretary could have performed the duty. Rexford G. Tugwell purported to be an Acting Secretary as set forth in the questioned order (par. 15, R. 333). Furthermore, no assignment made by the Secretary of Agriculture to Rexford G. Tugwell as Assistant Secretary of Agriculture of the duty of exercising the legislative authority granted to the Secretary of Agriculture in connection with this proceeding is referred to in the order or was made. If so, it would be presumed that the Assistant Secretary of Agriculture, having heard the argument, would have decided

the case and signed the order. In fact, it is out of this situation that the objection of the appellants to the procedure originates. All appellants asked was for a fair hearing before some one authorized and empowered to decide the issues. At the conclusions of the hearings before the Examiner who took the testimony (R. 1095), counsel for appellants stated that "he would continue to demand that the Secretary hear personally the argument on the evidence in behalf of the individual respondents or at least have some definite course of procedure adopted whereby the Examiner or some one else should formulate a report on the evidence so that respondents could have the character of hearing and right to present their side of the issues in this case which they believe the law entitles them to." The petitions charge that the Secretary acted upon reports and information given to him by unknown persons in the Department. Appellants had no opportunity as requested to present their side of the issues to him or even to examine reports upon the evidence presented to him if such were in fact presented or considered. Certainly this procedure is not justified by any of the authorities referred to by appellees. It constitutes a denial of that due process of law which requires a fair hearing, and violates the provisions of the Act which demand that the Secretary grant to the parties in a proceeding of this character "a full hearing".

CONCLUSION.

The original issues involved in the order of inquiry and investigation made by the Secretary in this proceeding were comparatively simple. It would have been entirely possible,

inasmuch as the purpose of the inquiry was to determine whether the rates and charges of each of the appellants in the aggregate were unreasonable, to have considered the aggregate costs of the rendition of such public service as appellants rendered during the test year. As repeatedly pointed out by appellants' accountant, this aggregate cost could be found with a fair degree of accuracy. The issues would have been simplified if individual treatment had been given to each appellant as demanded severally on behalf of the market agencies involved. But the purpose from the very outset was apparently to introduce into the proceeding all of the confusion, uncertainty and difficulty that it was possible to produce by involved accounting practice and arbitrary functional cost distributions. The apparent purpose was to cloud the simplicity and clarity of the real issue both from the standpoint of accounting and practical considerations and thus to produce a situation that would render review either by the Secretary or the courts so difficult and involved as to prevent fair and adequate consideration.

Such also appears to have been the purpose or object of many statements in appellees' brief. After all, the result in the aggregate as applied individually, by groups or in the entirety to appellants is the deciding factor. This Court has many times overlooked the method involved in order to sustain orders of administrative tribunals that reached on the evidence an ultimate result that appeared to provide a fair return. Such admittedly is not the case presented by this record. On the contrary, the effort of the appellees is to submerge the ruinous and confiscatory character of the result of the prescribed rates in unnecessarily involved accounting procedures and argumentative statements.

It is respectfully submitted that the decree of the District Court should be reversed and orders entered as prayed in the respective petitions of the several appellants.

Respectfully submitted,

FREDERICK H. WOOD,
JOHN B. GAGE,
Counsel for Appellants.

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No. 686

In the Supreme Court of the United States

OCTOBER TERM, 1935

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES AND THE SECRETARY OF AGRICULTURE

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. 686

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI

BRIEF FOR THE UNITED STATES AND THE SECRETARY OF AGRICULTURE

OPINION BELOW

The opinion of the District Court of the United States for the Western District of Missouri (R. 145) is reported in 8 F. Supp. 766. The opinion denying appellants' petition for rehearing (R. 164) is not reported.

JURISDICTION

The decree of the District Court was entered on June 20, 1935 (R. 166). Petition for appeal was

filed on June 29, 1935 (R. 168–176), and was allowed on the same day (R. 177–178).

The jurisdiction of this Court is derived from Section 316 of the Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159, 168 (U. S. C., Tit. 7, Sec. 217), which provides that:

> * * * the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this title, and to any person subject to the provisions of this title.

Judicial review of the orders of the Interstate Commerce Commission was originally provided for by Section 1 of the Act of June 18, 1910, c. 309, 36 Stat. 539, commonly known as the Commerce Court Act, which conferred jurisdiction upon the Commerce Court over "Cases brought to enjoin, set aside, annul, or suspend in whole or in part any order of the Interstate Commerce Commission." The Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219 (U. S. C., Tit. 28, Secs. 41 (28), 47), transferred the jurisdiction of the Commerce Court to the several District Courts of the United States, and provided that all suits to suspend or set aside an order of the Interstate Commerce Commission should be heard by three judges. Provision was made by the said Urgent Deficiencies

Act for direct appeal to this Court (U. S. C., Tit. 28, Secs. 47, 345 (4)).

QUESTIONS PRESENTED

1. Whether appellants have raised by their pleadings and proof the question of the alleged confiscatory operation of the rates prescribed by the Secretary.

2. Whether the method of rate-making employed by the Secretary is lawful.

3. Whether there is substantial evidence to support the Secretary's findings as to the reasonable costs of salesmanship.

4. Whether there is substantial evidence to support the Secretary's findings as to the reasonable costs of getting and maintaining business.

5. Whether there is substantial evidence to support the Secretary's findings as to the various other unit costs, including yarding salaries and office salaries.

6. Whether there is substantial evidence to support the Secretary's findings as to reasonable compensation for owners of the market agencies.

7. Whether the Secretary's finding that existing rates were unreasonable is supported by sufficient evidentiary findings.

8. Whether appellants were accorded a full and fair hearing by the Secretary of Agriculture as required by the Packers and Stockyards Act.

STATUTES INVOLVED

The pertinent provisions of the Packers and Stockyards Act, 1921, are set out in Appendix A, *infra, pages* 184–188.

STATEMENT

This is an appeal from a joint and final decree of a statutory three-judge court for the Western District of Missouri entered on June 20, 1935 (R. 166), dismissing petitions in fifty suits which the fifty appellants herein each separately instituted to enjoin respondents from enforcing an order of the Secretary of Agriculture dated June 14, 1933 (R. 23–130), fixing the maximum rates chargeable by market agencies for selling and buying livestock at the Kansas City Stock Yards in Kansas City, Missouri, and Kansas City, Kansas.

Appellants are "market agencies" as defined in the Packers and Stockyards Act (R. 1–2) engaged in the business of buying and selling livestock on commission at the Kansas City Stock Yards located in a district known as the West Bottoms lying partly in Kansas City, Missouri, and partly in Kansas City, Kansas (R. 41).

On April 7, 1930, the Secretary of Agriculture issued an order of inquiry and notice of hearing with respect to the lawfulness and reasonableness of the rates and charges collected by the various commission firms operating at the Kansas City market (R. 26). Pursuant to the notice, a hearing

was held before an examiner at Kansas City, Missouri, beginning December 3, 1930 (R. 27). Voluminous testimony was taken with respect to all the questions pertinent to the determination of fair and reasonable rates. The testimony taken at this hearing is printed in narrative form in the record (R. 199–701). Numerous exhibits, including audits of appellants' books for 1929, cost studies made from those audits by expert accountants, etc., were introduced into evidence by the Government and appellants. The hearing was concluded on February 10, 1931. On March 27, 1931, oral argument was heard by the Acting Secretary of Agriculture, and subsequently appellants submitted briefs (R. 2, 28).

On May 11, 1932, while the matter was still pending before the Secretary and before he had made any order, appellants filed a new schedule of rates designated as Schedule 3 (R. 3). On May 18, 1932, the Secretary of Agriculture issued his findings and order prescribing maximum reasonable rates to be charged by appellants (R. 28, 29).

On May 26, 1932, appellants, alleging economic changes since the test year of 1929, filed a petition for rehearing before the Secretary which, in view of the decisions in *Atchison, Topeka & Santa Fe Ry. Co.* v. *United States,* 284 U. S. 248, and *St. Joseph Stock Yards Co.* v. *United States,* 58 F. (2d) 290, the Secretary granted on July 15, 1932 (R. 29–30).

The rehearing was commenced before an examiner at Kansas City, Missouri, on October 6, 1932 (R. 30). All the testimony and exhibits introduced at the first hearing were put in evidence (R. 33), and a large amount of additional testimony and many new exhibits were presented by appellants and the Government. The testimony taken at the rehearing is printed in narrative form in the record (R. 702–1095). The hearing was concluded on November 16, 1932 (R. 30), and on March 24, 1933, oral argument was heard by the Acting Secretary of Agriculture (R. 3, 33).

On June 14, 1933, the Secretary issued his findings and order prescribing the maximum rates which are under attack in this case (R. 23–130). Appellants filed a petition for another rehearing before the Secretary on July 5, 1933, and the Secretary issued an order denying the same on July 6, 1933 (R. 3).

On July 19, 1933, the appellants each filed separate petitions in the District Court to enjoin enforcement of the order (R. 1–130B). The petitions contained the customary prayer for convoking a three-judge court, and asked for a temporary injunction and a permanent injunction against enforcement of the order (R. 22). A three-judge court was convened and, with the consent of the Government, the court entered a temporary restraining order conditioned on appellants' depositing with the court the amounts collected in excess

of the prescribed rates (R. 131). The temporary restraining order was subsequently continued with consent of the Government (R. 136).

On motion filed by appellees (R. 133), the District Court struck from the several petitions those portions alleging that appellants were not granted a proper hearing by the Secretary of Agriculture and that the Secretary improperly denied appellants a second rehearing after entry of the order challenged herein (R. 137). Appellees then answered on November 25, 1933 (R. 138), and the cases subsequently proceeded to trial.

The evidence before the court consisted of the abstract of the record and exhibits in evidence at the two hearings before the Secretary (R. 199, 1094). Appellants also offered additional evidence (R. 181–196),[1] which was received over appellees' objection that it did not properly relate to the issue of confiscation (R. 181).

On October 29, 1934, the District Court rendered an opinion and entered findings of fact and conclusions of law (R. 145–157) upholding the order of the Secretary and rejecting all of appellants' contentions. The court found that the findings of fact made by the Secretary were supported by substantial evidence and, on an independent consideration of the evidence received by the Secretary and

[1] This evidence was the testimony of appellants' accountant, J. W. Roberts, and certain exhibits prepared by him which have been printed in the appendix to the record.

of the evidence received by the court, adopted in its findings the findings of the Secretary (R. 153). Separate decrees were filed on December 20, 1934 (R. 157). Appellants, on the same day, filed a petition for rehearing (R. 159). On June 15, 1935, the parties entered into a stipulation consolidating the separate suits (R. 163). The petition for rehearing was denied in an order and memorandum opinion filed June 20, 1935 (R. 164, 166). The order also set aside the separate decrees and included a final consolidated decree (R. 167).

An appeal to this Court was allowed on June 29, 1935 (R. 177) and a supersedeas was granted on the same day (R. 178). The narrative statement of the evidence was approved by the District Court (R. 1095) and the parties stipulated that certain exhibits should be certified to this Court as original exhibits (R. 1096). Those exhibits have been certified to this Court, pursuant to Rule 10, paragraph 4, and it has been stipulated that they may be referred to by both parties.

The pertinent facts in this case are set out in the findings of the Secretary (R. 23–130). Since these facts are voluminous and must be discussed in connection with the argument, further recital will be left to portions of the brief devoted to argument.

SUMMARY OF ARGUMENT

I

The duty imposed upon the Secretary of Agriculture by the Packers and Stockyards Act of 1921

of fixing reasonable rates for services rendered by market agencies necessarily requires him to determine what costs and profits should be regarded as reasonable. The allowances for costs and profits used by the Secretary as a basis for prescribing a schedule of maximum reasonable rates need be only high enough to cover reasonable costs and profits rather than actual costs, which may be unreasonably high. If, as a result of unreasonably high existing rates, there are more agencies doing business on the market than the volume of business coming to the market warrants, the fact that, as an incidental result of prescribing reasonable rates, some agencies may be unable to continue in business does not invalidate the rates prescribed nor tend to prove that they are unlawful. It follows that the reasonableness of the rates prescribed by the Secretary is not to be tested by applying those rates to the actual costs incurred by appellants.

II

In fixing maximum market agency rates for the Kansas City market the Secretary made a specific allowance for interest upon capital, and that allowance is not challenged by appellants. There is no issue of confiscation in this case. Appellants' contention that the prescribed rates are confiscatory because they will not cover the costs incurred by, and in addition provide a profit for, each market agency now operating in the Kansas City market,

is without merit because (a) all established criteria of confiscation are inapplicable to rates charged for the sale of personal services, and (b) the Constitution does not guarantee to all persons engaged in a business rates high enough to cover their actual costs and a profit nor does it guarantee to each of them that his business may not be reduced or destroyed as a normal result of competition. Therefore, this case does not present the constitutional issue of confiscation and if the findings of the Secretary are supported by substantial evidence they should be upheld.

III

The arguments advanced by appellants based upon (a) their endeavor to test the rates by applying them to appellants' past actual costs irrespective of the reasonableness of those costs, (b) their assumption that a showing that past actual costs will not be covered in some instances is a showing of confiscation, and (c) their assumption that there is or can be any question of confiscation in this case, are inapplicable and beside the point, and, therefore, there is no merit in appellants' contention that the prescribed rates are "ruinous" in their effect upon appellants' businesses.

IV

The method used by the Secretary in determining and prescribing maximum rates to be charged by the Kansas City market agencies was in all

material respects the same as the method used by him in determining and prescribing maximum rates to be charged by the Omaha market agencies. The method used by him at Omaha has been approved by this Court in the case of *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420. Therefore, the method used by the Secretary at Kansas City and involved in this case is lawful.

V

There can be no contention that the maximum rates prescribed by the Secretary will not yield the reasonable costs and profits found by the Secretary. As a matter of fact, application of the rates to the business done by the agencies at the Kansas City market in 1931 would have produced a margin or "cushion" of $150,212.91 over and above such reasonable costs and profits.

VI

The Secretary found and the record shows that costs incurred in the market agency business as it was conducted at Kansas City in 1931 naturally fell into two groups: (1) costs which the conditions of the business tend to increase, i. e., salesmanship and business getting and maintaining; and (2) costs which the conditions of the business tend to keep down, i. e., yarding salaries, office salaries, yarding expenses, office expenses, administrative and general expenses, insurance and interest on investment.

The allowance made by the Secretary to be covered into rates on account of salesmanship is amply supported by uncontradicted testimony from well-qualified witnesses, by evidence of actual accomplishments at the market, and by evidence that actual costs at the market were excessive and the number of agencies greater than the volume of business warranted.

The allowance made by the Secretary to be covered into rates on account of costs of business getting and maintaining is supported by ample evidence of abnormal competitive conditions at the Kansas City market, abnormal and widely varying expenses and methods of getting and maintaining business, actual accomplishments at the market, and wasteful and extravagant actual expenses (borne unequally by different classes of livestock producers).

The Secretary's findings and allowances on account of the class of costs designated by him as costs which the conditions of the business tend to keep down are supported by ample evidence, particularly by statistical demonstration that such allowances, if applied to the actual business of the agencies in 1931, would have produced revenue substantially more than enough to cover the actual out-of-pocket expenses of appellants for 1931 for yarding salaries, yarding expenses, office salaries, office expenses, administrative and general ex-

penses, insurance, and interest on investment (including additional accruals for interest on investment not shown by appellants' books as expenditures and insurance allowances to some firms which did not carry reasonable insurance).

The Secretary's allowance for return to the owners of the market agencies, including compensation for management and the carrying of uninsurable risks, is amply supported by the evidence and is not challenged by appellants in their brief.

Therefore, the findings and allowances of the Secretary with respect to functional unit costs and profit are reasonable and are amply supported by the evidence.

VII

The Secretary made a legally sufficient finding that the existing rates are unreasonably high. The Secretary found that the existing rates and charges are unreasonable and unjustly discriminatory, and this ultimate finding is fully supported by lengthy and detailed evidentiary findings which disclose the facts and methods which the Secretary used in reaching his ultimate conclusion.

VIII

In the rate proceeding here in question, appellants were afforded a full and fair hearing after due notice and the Secretary regularly exercised

the authority granted to him by statute; therefore, the appellants have not been denied due process of law.

ARGUMENT

I

APPELLANTS' INSISTENCE ON RATES WHICH WILL COVER ACTUAL COSTS IS UNWARRANTED IN PRINCIPLE AND IS DESIGNED TO DEFEAT AND NULLIFY THE RATE-MAKING POWER CONFERRED BY THE PACKERS AND STOCKYARDS ACT

The business in which appellants are engaged at the Kansas City stockyards is in all essential respects similar to that in which the appellants in the case of *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, were engaged at the Omaha stockyards. Appellants here, as was also the case with the appellants in the *Tagg Bros. & Moorhead* case, have eliminated rate competition; instead, they charge uniform rates fixed without consulting the shippers and others who pay the rates. Originally the rules of the Kansas City Live Stock Exchange, to which appellants belong, provided a schedule of commissions applicable to all members (Gov. Ex. 9, pp. 46–50). Notwithstanding the fact that it does not definitely appear from the record that this rule has ever been amended, on May 11, 1932, all of appellants severally filed a tariff of uniform selling rates and charges to become effective May 23, 1932 (R. 64). Although each appellant physi-

cally submitted a separate schedule, the tariff of rates contained in each was the same.[2]

The Packers and Stockyards Act vests in the Secretary of Agriculture the responsibility of keeping the rates and charges collected by livestock market agencies for their personal services within reasonable bounds. Section 310 of the Act provides *inter alia* that whenever the Secretary, after hearing under an order for investigation and hearing, is of the opinion that any rate, charge, regulation, or practice of a market agency is or will be unjust, unreasonable, or discriminatory, the Secretary may determine and prescribe what will be the just and reasonable rate or charge to be thereafter observed in such case, or the maximum or minimum to be charged. This power was granted to the Secretary in order to protect the shippers of livestock from the necessity of paying unjust, unreasonable, or discriminatory rates for market agency services at stockyards subject to the Act. Although shippers are free, in theory, to use the facilities of the markets without making

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[2] The Secretary of the Exchange testified with respect to the uniform schedules filed by appellants in May 1932:

> I believe the tariffs now in effect and charged by the members of the Exchange are uniform with the exception that they are not all uniform as to buying. As to selling they are uniform. I know of no agreement or arrangement whereby they were made uniform. That is just a coincidence. [R. 708.]

That the filing of approximately fifty schedules, all containing the same selling rates, was not a mere coincidence is, however, an inescapable inference from other testimony in the record (R. 843, 908, 1086–1088).

use of the services of market agencies, as a practical matter, this course is impossible, and they must perforce sell through the market agencies. As the livestock markets of this country are now organized, the shippers of livestock have no bargaining power with respect to the commissions that they shall pay to market agencies. Inasmuch as rate competition has been eliminated by the market agencies themselves, the only check upon the imposition of unreasonable rates is that imposed by regulation. Bargaining in any real sense between the individual shipper and the market agencies with respect to commissions is impossible. It was because of these circumstances that Congress provided for regulation of market agency rates by the Secretary of Agriculture to protect the interests of the shippers and the public, and to prevent unreasonable rates from becoming a burden upon interstate commerce. The constitutionality of such regulation has been sustained by this Court in *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, and it is not challenged in this case.[3]

The Packers and Stockyards Act was approved August 15, 1921. Within a year after the Act became effective, a formal complaint was filed with the Secretary by the American National Livestock Association and fourteen other associations of livestock producers, alleging, among other things, that

[3] Appellants expressly concede the constitutionality of such regulation (appellants' brief, p. 81).

the commission charges assessed and collected by the market agencies for selling livestock at the stockyards located at Kansas City, Omaha, St. Paul, and Chicago were unjust, unreasonable, and discriminatory. Before a hearing was ordered on this complaint, a conference was held between representatives of the market agencies at the Kansas City market and representatives of various livestock organizations which resulted in a proposal that the issue in dispute be settled by arbitration. The conference nominated arbitrators whom the Secretary approved. Subsequently, the arbitration plan was also adopted by the market agencies at Omaha, St. Paul, and Chicago, and the arbitrators proceeded with their duties (Resp. Ex. 24, pp. 1–3). These arbitrators made extensive personal investigations of conditions at the various stockyards, as a result of which they agreed upon a recommendation that the schedules of rates and charges then in effect at the several stockyards under investigation be amended in certain particulars. Their recommendation included a separate schedule of rates for Chicago, Kansas City, Omaha, and St. Paul (Resp. Ex. 24, pp. 13–28). The rates recommended as a result of this arbitration were approved by the Secretary and accepted by the market agencies at the several stockyards involved. At the Kansas City stockyards those rates remained in effect without material change until 1932 (R. 64, 216).

The arbitration award shows that the same proceeding affected the rates at Kansas City and those at Omaha (Resp. Ex. 24). The record in the *Tagg Bros. & Moorhead* case shows that following the award of the arbitrators, the rates collected for market agency services at the Omaha stockyards for several years were those recommended in the award (*Tagg Bros. & Moorhead,* R. 10–13). Several years after the award, however, the market agencies at Omaha filed a new tariff containing higher rates and charges, and it was the filing of the new tariff which caused the administrative inquiry that resulted in the order that was attacked by the market agencies in the *Tagg Bros. & Moorhead* case. In this respect again, the facts in the Omaha situation were very similar to those in the instant case. The appellants in the instant case observed without material change the rates provided in the award of the arbitrators until 1932 when, prior to the rehearing, appellants filed a new schedule of rates and charges (R. 28–29, 64–68), which, among other things, was the subject of the inquiry at the rehearing (R. 30). It is plain, therefore, that although the appellants in the instant case observed for a longer period the rates recommended by the arbitrators than did the market agencies doing business at Omaha, the history of the rate proceedings at the two markets is otherwise substantially the same.

When the inquiry in this case was initiated, the Secretary was faced with the same problem with which he was faced in the proceedings at Omaha, namely, the problem of determining upon a schedule of maximum rates which would be fair and reasonable both to the shippers of livestock and to the market agencies. Inasmuch as appellants are engaged in rendering personal services and, admittedly, employ very little capital in their business, the task of the Secretary was principally one of determining upon the reasonable costs of performing those services and a reasonable profit therefor, taking into account as well the value of the service. The problem was difficult because of the numerous firms involved, no two of which had a uniform business experience. The execution of the Secretary's duty under the Act required him to determine the reasonable costs and profits which the rates should be high enough to cover for firms whose personnel differed in its length of experience, relative aptitude for work, individual industry, and capacity to attract and keep business. The problem was further complicated by the existence of abnormal competition among appellants for the business coming to the Kansas City stockyards—competition which has not resulted in any decrease in rates to the shippers, because uniform rates have been maintained by all appellants, but which under the protection of such uniform rates has mani-

fested itself in an increase in costs without any increase in business.

Although there has been a gradual but fairly steady reduction in receipts at the Kansas City stockyards over a period of years (R. 516), the reduction in volume has not been accompanied with any corresponding reduction in the size of the market agency organizations or in their overheads (see p. 96, *infra*). Indeed, the record in this case discloses that the more important items of cost have mounted with the reduction in volume of receipts coming to the market. Although the business of the market as a whole has fallen off, the number of firms has shown no substantial decrease, with the result that the rates charged have been high enough to maintain in business a larger number of firms than is necessary to handle the decreased volume of livestock.

THERE IS NO BASIS FOR APPELLANTS' CONTENTION THAT THE SECRETARY MUST FIX RATES WHICH WILL PRESERVE ALL OF THE EXISTING MARKET AGENCIES

It is true, as appellants state, that the Secretary of Agriculture has no power under the Packers and Stockyards Act to limit the number of market agencies doing business at the stockyards (appellants' brief, pp. 3–4). It is also true, as appellants state, that nothing in the nature of a certificate of public convenience and necessity is required for entry into the market agency business and that the Act contemplates that market agencies may engage in the

business without restriction by the livestock exchanges. But the Act does authorize the Secretary to fix *reasonable rates.* If there are more market agencies operating at a given market than are necessary to handle the volume of business in a reasonably efficient manner and if, in connection with that condition, costs and rates are maintained at an unreasonably high level, the practical result of an order by the Secretary fixing reasonable rates may well be to limit the number of agencies which can continue to operate. Congress must have intended this result because otherwise its gift of power to prescribe reasonable rates would have been an empty gesture. The preservation of all existing market agencies cannot be a condition of the proper exercise of the Secretary's rate-making power, because, if this were true, rates would be determined by the number of market agencies in existence at the time of entry of the rate order, and not by the Secretary's findings of reasonableness. The Act therefore contemplates that any person may engage in the market agency business and compete with others for that business, but only under reasonable rates, and it expressly vests in the Secretary of Agriculture the power to determine what are reasonable rates.

Appellants' whole argument is premised upon a palpable and fundamental misconstruction of the Secretary's rate-making power and of his purposes as expressed in the order attacked in this case.

Appellants seem to contend that since the Act does not expressly confer upon the Secretary the power to reduce the number of market agencies, he cannot fix rates which might in practice accomplish what he is not authorized to do directly; that the Act contemplates a competitive market and that therefore the Secretary canot make an order which may have the effect of eliminating some of the competitors; that the effect of the Act and the Secretary's interpretation thereof has been to encourage participation in the business by any one who desires to participate therein, and that a rate order which may eliminate some persons desiring to engage in the market agency business is therefore inconsistent with the Act and the Secretary's own interpretation of it, and is *ultra vires;* that the whole order challenged herein is grounded upon the Secretary's opinion that there are too many market agencies and too much competition in the business and that he has set about to prescribe rates which will accomplish his allegedly illegal purpose to reduce the number of market agencies competing for the business at the Kansas City stockyards. Appellants do not attempt to press the logic of this argument to its inevitable conclusion, that is, that the Secretary has no authority to make a rate order which does not preserve all existing market agencies. The prudence of this forbearance is obvious because the mere statement of that conclusion exposes the fallacy of the premise from which the whole argument proceeds.

Of course it is patent that under any schedule of reasonable rates there would be firms whose lack of efficiency or inability to get business would compel retirement from the competitive field. It is likewise obvious that if the Secretary's rate-making power were to be construed to require the fixing of rates high enough to preserve in the competitive race all comers to the market, the only manner in which his power ever could be exercised would be to order rate increases from time to time upon showings of deficits by marginal firms. Any order to reduce rates, no matter how exorbitant or unreasonable they might be, would always necessarily have the effect of eliminating some of the marginal firms unless those firms could make reductions in costs or acquire more business.

So appellants are plainly in error when they contend that the Secretary's rate-making power is limited by his lack of authority to prescribe or reduce the number of agencies that may do business on the market. Appellants' argument in this respect is simply an attempt to nullify the rate-making power over market agencies.

Granted that one of the purposes of the Act is to promote fair competition at the stockyards and to free them from monopolistic and discriminatory practices, it does not follow that the Act is designed to assure the maintenance in competition of every market agency regardless of its capacity to attract sufficient business to support it at a profit. *What*

the Act seeks to accomplish is the maintenance in competition, free from unjust, unreasonable, and discriminatory practices, of those firms which can operate under just, reasonable, and non-discriminatory rates. It is the Secretary's duty under the Act to determine upon sufficient evidence what those rates are, and to order that market agencies shall not publish, demand, or collect rates that are not just, reasonable, and non-discriminatory. If an order of the Secretary prescribing a schedule of maximum reasonable rates is entered pursuant to the statute and after a fair hearing and if it is supported by the findings and by sufficient evidence, it is lawful irrespective of whether there may be some or many firms in business that would incidentally be eliminated from the competitive struggle unless they reduced their costs.

While the Secretary is not authorized to expressly prescribe or limit by his order the number of firms that may engage in the market agency business, he is under a duty to take cognizance of evidence tending to show that under present competitive conditions at the market certain costs actually incurred are unreasonable and are not to be accepted as conclusive on the question of what are reasonable costs. The Secretary's duty of determining what are just and reasonable rates in fact requires him to give consideration to evidence of the excessiveness of certain costs where such evidence is found. If such evidence shows that there

are many market agencies not receiving a sufficient volume of business to entitle their costs to be regarded as reasonable, the Secretary is required to take cognizance of that fact. Such evidence, in view of the conditions under which appellants' business is carried on, goes to the very heart of the problem of determining upon a schedule of maximum reasonable rates. If the Secretary were to ignore such evidence and to proceed upon the assumption that the costs of all of the agencies doing business must necessarily be covered by any rate order made, the necessary result always would be either the approval of existing rates or an order increasing them. If the Secretary must be blind to evidence indicating an over-manned condition on the market with consequent excessive costs per unit of service, then plainly his hands are tied, since rates would always have to cover actual costs no matter how excessive.

Since the Secretary was fully apprized of the fundamental nature of the problem by the record in this case, he made certain findings with respect to the inadequacy of the present business at the stockyards to support economically all of the firms now striving to make a profit (R. 90–91). These findings were directly pertinent to the matter of determining reasonable costs. There is nothing in the order, however, to suggest that the Secretary's primary purpose was to reduce the number of firms engaged in business, or that he in any

way exceeded his statutory power. Appellants patently mistate the Secretary's position when they say that "The rates prescribed were clearly made as low as they were for the purpose of limiting the number which might successfully engage in the business" (appellants' brief, p. 93). It is this misstatement of what the Secretary did which furnishes the basis for most of appellants' argument that his order exceeds his statutory power.

THE APPLICATION OF THE PRESCRIBED RATES TO THE PRESENT UNREASONABLE COSTS INCURRED BY APPELLANTS FURNISHES NO CRITERION OF THE REASONABLENESS OF THE PRESCRIBED RATES

In the discussion of the evidence which will later follow, particularly the evidence with respect to salesmanship and business getting and maintaining costs, it will appear that in appellants' business the actual costs depend largely upon what the rates are, and that whether or not certain costs will be incurred depends largely upon whether the rates are high enough to bear them. In a public utility employing a large capital investment, many of the costs are relatively fixed and must be incurred irrespective of fluctuations in business. If prescribed rates are not high enough over a period of time to permit the payment of necessary costs in such a business, confiscation of property results. Here, however, in appellants' business, practically nothing but personal service is involved. If rates are high, salaries (the largest item of cost) will tend to

range higher and business getting costs will increase. If rates are low, salaries and business getting costs will tend to decrease. The majority of costs being flexible, market agencies will tend to bring themselves within the economically permissible range of costs under any rate schedule. Thus, costs are in fact controlled by rates. If appellants' suggestion is accepted that rates must be prescribed which will cover existing costs, a situation will follow in which existing rates will control the rate-making authority instead of that authority controlling the rates.

As will later appear, the Secretary has found upon sufficient evidence that as to certain of the costs incurred by appellants, the conditions of the business tend to hold them down. As to these costs, the normal actual costs may furnish a fair criterion of reasonableness. As to certain other costs (salesmanship and business getting and maintaining), the conditions of business as carried on at the Kansas City stockyards tend to increase such costs beyond reasonable bounds. As to these latter costs, past costs as actually incurred do not present a fair criterion of reasonableness. Some other guide in the determination of reasonableness as to such costs must be found, and the guide which the Secretary followed in determining upon a fair allowance for salesmanship and business getting and maintaining costs will later be considered in detail. It is enough at this point to say that if the evidence

establishes the reasonableness of the cost allowances for salesmanship and business getting and maintaining, those allowances are not insufficient merely because appellants under their present conditions of operation, are failing to perform these functions for a reasonable cost. Obviously, reasonable rates cannot be predicated upon unreasonable costs. The past actual costs incurred by appellants do not in and of themselves furnish a proper standard of reasonable costs, but they must be adjusted and corrected to eliminate so far as possible those factors which have in the past made costs unreasonable.

It will later be shown that the maximum rates prescribed in the order challenged in this case would have produced if applied to the volume of business received in 1931 approximately $150,212.91 in excess of the costs found by the Secretary to be reasonable for all species of livestock for the market as a whole. Appellants have made no claim in this litigation, either separately or jointly, that the rates would not adequately cover the costs and profits found by the Secretary to be reasonable, with a substantial margin besides for each and all of them. Since there is no issue in the case as to the adequacy of the rates to yield the costs and profits found to be reasonable, the issue is whether the findings of the Secretary as to reasonable costs and profits are in fact reasonable and supported by substantial evidence.

Not only are the prescribed rates more than adequate to cover the costs and profits found by the Secretary to be reasonable, but, according to appellants' own computation (based upon Pet. Ex. 4; appellants' brief, p. 56), 26 out of 43 firms would have earned in 1931 under the Secretary's rates a net compensation for owners over and above costs without making any reduction in costs at all. While such net compensation as shown in appellants' computation is very low for several of the firms, the fact that a majority of the firms could have earned net compensation for owners at all demonstrates that a majority of the firms could have operated in 1931 under the prescribed rates without sustaining a loss and *without making any reduction whatever in costs.*

It is particularly significant that the rates produce this result even though they were not intended to provide revenue sufficient to yield a profit over and above the unreasonable costs actually incurred by appellants. Thus, even if we ignore the fallacy of the premise upon which appellants' argument rests, the table on page 56 of appellants' brief is striking proof of the reasonableness of the rates which the Secretary has fixed, because it shows that if those rates had been applied in 1931, a majority of the firms, even under the present conditions of unreasonable and extravagant costs would have re-

alized some return for their owners. But if the facts disclosed by the table were different from what they are, there would still be no merit in appellants' argument. Even if the table showed that not one of the market agencies could maintain the present level of unreasonable costs and make a profit under the Secretary's rates, that demonstration would in itself have no significance. The reasonableness of the rates is not to be tested by their application to appellants' actual costs for any given period, because the reasonableness of those costs is in itself the principal issue involved in the determination of reasonable rates. Therefore, whether the application of the prescribed rates to the actual costs incurred by appellants during any given period would produce, as to any or all of them, a profit or a deficit is beside the point.

A fair rate order conceivably might cover the costs actually incurred by all of the market agencies, or it might not cover the actual costs of any of them, depending upon the reasonableness or unreasonableness of their costs. The adequacy of rates to cover actual costs, therefore, is not and cannot be a test of reasonableness, either as to individual firms or as to groups of firms.

The test of the reasonableness of prescribed rates is whether or not they make adequate allowance for reasonable costs of conducting the business and a reasonable profit, and that question is to be resolved not by applying the rates to the

actual costs of all or any of the firms, but rather by examining the constituent cost findings upon which the prescribed rates are predicated to ascertain whether each of those constituent cost findings is reasonable in the light of the evidence, and whether the rates are adequate to yield a reasonable profit over and above such costs. It is solely a question in the final analysis of whether or not the evidence adequately supports the findings as to reasonable costs and reasonable profits. If such findings are adequately supported and the rates prescribed are sufficient to yield the costs and profits found to be reasonable, those rates must be reasonable irrespective of how they may affect particular market agencies or groups of agencies. If particular market agencies or groups of agencies cannot operate successfully under such a schedule of rates, it would seem to indicate that the fault is in the market agencies and not in the rates.

Appellants must admit that a market agency could not reasonably expect to earn a year's expenses and anything like a full year's salary or profit for the owner from the handling of a single car of livestock per year. This being true, the question arises whether it is reasonable to expect that this result can be reached from the handling of 10 cars or 50 cars or 100 cars. Somebody must decide what constitutes a reasonable year's work for the earning of a reasonable year's salary, in order to determine what rates are reasonable.

This duty rests under the law upon the Secretary of Agriculture, and in his findings in this case he has made such a determination.

Later appellees will discuss the reasonableness of the Secretary's findings in this case and the adequacy of the evidence to support them, which is the only real question presented by this appeal. The point which appellees now make, however, is that facts with respect to whether the prescribed maximum rates will cover the actual costs have no probative force in determining the reasonableness of the prescribed rates.

II

This Case Does Not Present Any Issue of Confiscation

Appellants contend that the effect of the prescribed rates upon their businesses, severally and collectively, demonstrates that the order is confiscatory (appellants' brief, pp. 48–80).

In Section VIII of their petitions filed in the District Court appellants attempted to raise the issue of confiscation by alleging in each petition the specific amount by which the gross revenue under the prescribed rates, if they had been in effect in 1931, would have failed to cover the "total calculable costs"[4] incurred by the petitioner during that

[4] "Total calculable costs" is the term used by appellants in their respective petitions. Appellants apparently include in "total calculable costs," all out-of-pocket expenses, interest on capital, accruals, and appraisals of the value of the services of the owners. (See Resp. Ex. 207.)

year; the percentage by which the gross yield of the petitioner in each case had increased or declined under the existing rates during the year 1932 as compared with 1931 and during the first five months of 1933 as compared with the first five months of 1932; and the percentage of increase or reduction which the prescribed rates would cause in the revenue of each petitioner from each species. Allegations were also made with respect to the number of appellants who would sustain operating deficits under the prescribed rates and the aggregate amount that would be available under the prescribed rates for compensation to all of the owners. Each petitioner further alleged the amount that would be available under the prescribed rates for owner compensation in the case of the petitioner and also what the alleged reasonable compensation for the owner or owners of the petitioner would be. It was alleged in all of the petitions in general terms that the prescribed rates were individually and severally confiscatory as applied separately to calves, yearlings, cattle, hogs, and sheep, and that each and all of the rates would fail to yield the petitioner a fair and compensatory return for stockyard services rendered by such petitioner (R. 18–20).

Appellants have contended throughout this litigation that they have properly raised the issue of confiscation by the allegations made in Section VIII of their petitions. By filing separate peti-

tions, all of which were identical except for the figures which were inserted in Section VIII, appellants have sought to avoid the pleading defects which were present in the complaint in the case of *Aetna Insurance Co.* v. *Hyde,* 275 U. S. 440, and at the same time to raise the issue of confiscation.

Appellants' attempt to inject the issue of confiscation into this case fails to surmount a difficulty much more fundamental than the deficiencies in the form of the pleadings with which this Court dealt in the *Aetna Insurance Co.* case. Even if the facts alleged by appellants were proved to be true, those facts, we submit, would not establish confiscation as a matter of law.[5] Appellants' allegations by which they endeavor to raise the issue of confiscation are all predicated upon their assumed right to earn what they call their "total calculable costs." This contention, it has already been shown, is fundamentally inconsistent with the ex-

[5] Appellants state that "it can fairly be taken as admitted that the rates are ruinous and confiscatory as to each and every appellant individually" (appellants' brief, p. 51). The only basis asserted by appellants for this curious conclusion is certain statements made in the joint answer filed by appellees denying the materiality of appellants' allegations with respect to the inadequacy of the prescribed rates as applied to the costs claimed by appellants to have been actually incurred. The extent to which appellants were compelled to distort the plain meaning of words in order to reach this conclusion is fully demonstrated by the excerpts from appellees' answer which are quoted on pages 50–51 of appellants' brief.

istence of power in a government agency to fix reasonable rates for the conduct of a business of the kind here involved.

Appellees, however, do not emphasize the insufficiency of the petitions, because they submit that the question involved in this case is not and cannot be an issue of confiscation at all. It is believed that the concept of confiscation is inherently inapplicable to a case of this character.

Appellants have not based their claims that the prescribed rates are confiscatory upon any alleged failure of the rates to yield an adequate return on the relatively small amount of capital that is employed in the public service.[6] A confiscatory rate, however, as generally understood in a public utility rate case, means a rate which if made effective will not produce a fair return upon the fair value of the property employed in the public service. The test of confiscation is a fairly simple one: Will the

[6]Appellants do not argue in their brief that the Secretary's allowance for interest on capital is inadequate. The District Court found that such allowance was adequate (R. 152). Appellants say (at p. 15 of their brief) that their business is "a personal service business," and further that "The physical facilities employed are provided by the Kansas City Stock Yards Company whose charges are not in question in the present proceeding." Thus, appellants do not even make any reference to the relatively small amount of their own capital that they utilize. Such capital consists of such tangible property as office furniture and fixtures, automobiles, horses, and some working capital (although the working capital needs are small, as the business is essentially a cash one) (R. 60–61).

prescribed rates yield upon the fair value of the property a fair return? Once the valuation of the property is determined and a fair percentage rate of return fixed, the application of the formula is more or less a mechanical process. If the revenue that will be yielded by the prescribed rates during a fair test period does not fall below the lower limits of a fair return upon the fair value of the property, the rate is not confiscatory. If the revenue yield during a fair test period is materially below those limits, the prescribed rates are considered to be confiscatory. Such a test obviously cannot be applied in the present type of case involving a business in which practically nothing save personal service is sold.

The usual criteria of confiscation palpably fail when attempts are made to apply them to rates for the sale of personal service. Appellants have not shown that such criteria are applicable, nor have appellants suggested any other criteria of confiscation capable of rational application. Throughout appellants' argument on confiscation there recurs frequently the suggestion that the prescribed rates must be confiscatory, because on the basis of past actual costs the profits of any particular firm would not be large (although, according to appellants' own computation, at page 56 of their brief, two of the appellant firms would have derived in 1931 a compensation per owner in excess of $4,000 and six of them would have derived

a compensation per owner of between $2,000 and $3,000 without making any cost reductions whatsoever), and many of the firms would earn no profits and would sustain deficits. Throughout their argument on the subject of confiscation (appellants' brief, pp. 48–80) appellants emphasize the supposed severity of the prescribed rates as applied to their businesses, severally and collectively, on the basis of inclusion of their past actual costs. But nowhere in appellants' argument is there suggested any concrete or practicable test of confiscation. Inasmuch as appellants contend that the rates prescribed are confiscatory as to all of the market agencies, even though as applied to the business of 1931 those rates would have produced a net return for the owners of many of the market agencies, it must be assumed that appellants believe that if rates are to avoid being confiscatory it is not enough for them to produce a profit, but that they must also produce a profit of some indeterminate and unspecified size. They do not anywhere suggest either the amount of, nor any method for determining the amount of, the profit which they assert the Constitution guarantees to each of them. This omission is doubtless intentional and prompted by considerations of caution because any attempt to give definite form or content to this asserted principle of a profit guaranteed by the Constitution would involve appellants' entire argument in disaster. The fact of the matter is that

the concept of confiscation cannot be adapted to the use to which appellants seek to put it.

Appellants' whole complaint is that the prescribed rates must be confiscatory because appellants think them to be "ruinous," and the argument that they are "ruinous" is based upon appellants' application of the prescribed rates to their business on the basis of inclusion of past actual costs. And even making the application of the rates on such a basis, it is shown by their table at page 56 that the rates would have been more than adequate to cover the actual costs in 1931 of more than half the firms.

Appellants have not stated just what it is that they think the prescribed rates would confiscate and the nearest that they come to the question is when they state that "the status of these appellants to raise the issue of confiscation and to have a determination upon it is not defeated by the personal service character of their business or by the fact that the pecuniary capital investment is small" (appellants' brief, p. 76). In support of this proposition, they cite *Truax* v. *Raich*, 239 U. S. 33, 37–38, and *International News Service v. Associated Press*, 248 U. S. 215, 236–237.[7] But these two cases obviously are not in point.

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[7] Appellants assert that this Court assumed in *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, that appellants have an undoubted status to raise the issue of confiscation (appellants' brief, p. 76). Appellees submit that appellants have misunderstood the action of this Court in that case.

Truax v. *Raich*, 239 U. S. 33, involved the constitutionality under the Fourteenth Amendment of an Arizona statute which provided that any employer of more than five workers must employ not less than 80 percent qualified electors or native born citizens of the United States, and provided criminal penalties for violation. An employee, upon receiving notice that he would be discharged on account of the provisions of the statute, brought a bill in equity against his employer and certain state officials, alleging that there was no adequate remedy at law and seeking a decree declaring the Act unconstitutional and restraining action thereunder. In sustaining the employee's right to maintain the suit, this Court held that the right to earn a livelihood and to continue in employment unmolested by efforts to enforce void enactments

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The question of whether the concept of confiscation could be applied in a case involving the fixing of rates for personal service was not argued in the briefs submitted in *Tagg Bros. & Moorhead* v. *United States*. This Court disposed of that case by holding that the action of the lower court in concluding that the rates fixed were not *unreasonably low* or confiscatory conformed to the evidence "whether the examination be confined to that evidence which was received by the Secretary or be extended to include the additional evidence introduced before the master and the court" on the issue of confiscation. It is significant that this Court found it unnecessary to decide whether additional evidence was admissible in the District Court on the issue of confiscation. It is submitted that this Court made no assumption with respect to the question of whether the issue of confiscation could be involved in that case, but held merely that *if* the claim of confiscation could be raised, there was no evidence to support it.

is entitled to protection in equity in the absence of an adequate remedy at law. The *Truax* case in no wise tends to establish that all persons who are now engaged in a business in which the sale of their personal service is subject to rate regulation are entitled under the Constitution to rates high enough to cover their actual costs and a profit, or that rates that fail to do this are confiscatory.

The case of *International News Service* v. *Associated Press,* 248 U. S. 215, is likewise inapplicable. It holds that a news gathering agency is entitled to protection in a court of equity against unfair competition by a rival agency, and that the right to acquire property by honest labor or the conduct of a lawful business is as much entitled to protection by a court of equity as the right to guard property already acquired. But this general proposition in no way tends to prove that the concept of confiscation is applicable to a personal service rate case. Granted that equity will protect from unlawful interference the right to acquire property by honest labor or to conduct a lawful business, it does not follow that appellants have a constitutional right to have their actual costs covered by the prescribed rates, or that rates failing to do this are confiscatory. There was no constitutional question involved in the *International News Service* case, the question there being primarily one of equity jurisdiction. In the instant case appellants are seeking to assert consti-

tutional rights, and the *International News Service* case furnishes no support for the supposed existence of the rights which appellants claim.

Appellants quote (appellants' brief, p. 76) from an old English case to the effect that "Every man's trade maintains his life, and therefore he ought not to be deprived or dispossessed of it any more than of his life," which, as a general proposition, of course, cannot be disputed.[8] But the right of

[8] The quotation is taken from the report of the *Case of Monopolies* found in Volume 11 of Coke's Reports, at page 84b (77 English Reprints, 1260). This was a case decided in 1603, in which the Court of Kings' Bench held invalid a monopoly of the manufacture of playing cards granted to a groom of the Privy Chamber by Queen Elizabeth. The monopoly had been granted in the exercise of the royal prerogative and had never been sanctioned by Parliament. The language quoted by appellants was used, whether by court or counsel is not clear, in pointing out that this exercise of the royal prerogative absolutely closed a trade to those who had previously followed it. The language may be of interest to the legal historian, but it throws no light on the question of whether a rate fixed for the personal service performed by appellants at the Kansas City stockyards can ever be confiscatory. In passing it may be noted, however, that whatever right a man may have had in England in the sixteenth century to engage in a certain trade or calling, he did not have an absolute right to any specified profit or to charge rates or prices which would cover his actual costs. The power to fix prices and rates for various trades and callings was exercised by the English Parliament throughout English history. For example, see 51 Henry III, 1266 (fixing the price of bread and ale); 23 Edward III, Chapter 6, 1349 (fixing the rate of wages of laborers); 5 Richard II, Stat. 1, Chapter 4, 1381 (fixing the price of wine); 24 Henry VIII, Chapter 3, 1532 (fixing maximum prices for beef, pork, mutton, and veal).

a person to engage in a business at a profit irrespective of his capacity to attract business, the economic demand for his enterprise, or his own economy and efficiency is not guaranteed by the Constitution. Appellants, in the very portion of their argument wherein they seek to establish that the prescribed rates are confiscatory, refer in passing to the fact that some businesses are destroyed "as the normal result of competition" (appellants' brief, p. 76). In a business such as appellant's, price or rate competition has been eliminated by their own action; therefore, they have protected themselves against one of the most usual causes of the destruction of a business—i. e., price competition. But the absence of this type of competition on account of the action of appellants themselves does not vest in them any constitutional right to rates which will maintain any given number of them in business irrespective of the amount of business they can get or the economy of their operation.

The Constitution does not protect against competition.[9] Appellants have cited no authority that

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[9] In *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, this Court said (p. 447):

> The Fourteenth Amendment does not protect against competition.

In *Public Service Commission of Montana* v. *Great Northern Utilities Co.*, 289 U. S. 130, this Court said (p. 135):

> The due process clause of the Fourteenth Amendment safeguards against the taking of private prop-

establishes a constitutional right to rates which will maintain all or any of them in business at a profit over and above their actual costs as incurred. Manifestly, if this were the law, the market agency business could quickly become a certain haven of refuge for the unemployed.

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erty, or the compelling of its use, for the service of the public without just compensation. * * * But it does not assure to public utilities the right under all circumstances to have a return upon the value of the property so used. The loss of, or the failure to obtain, patronage, due to competition, does not justify the imposition of charges that are exorbitant and unjust to the public. The clause of the Constitution here invoked does not protect public utilities against such business hazards.

In *Hegèman Farms Corp.* v. *Baldwin*, 293 U. S. 163, this Court said (pp. 170–171):

> The appellant would have us say that minimum prices must be changed whenever a particular dealer can show that the effect of the schedule in its application to himself is to deprive him of a profit. This is not enough to subject administrative rulings to revision by the courts. If the designation of a minimum price is within the scope of the police power, expenses or losses made necessary thereby must be borne as an incident, unless the order goes so far beyond the needs of the occasion as to be turned into an act of tyranny. Nothing of the kind is charged. The Fourteenth Amendment does not protect a business against the hazards of competition. *Public Service Comm'n* v. *Great Northern Utilities Co.*, *supra*, at page 135. It is from hazards of that order, and not from restraints of law capriciously imposed, that the appellant seeks relief. The refuge from its ills is not in constitutional immunities.

It should be noted that in the usual public utility rate case the employment of fixed capital is large and the property is generally permanent and immovable. The very requirement of substantial investment in order to embark on a public utility enterprise tends to operate as a natural check upon overdevelopment and excessive competition between public utilities in the same community. It is fair and reasonable that if one's capital is employed in the public service under conditions where it cannot readily be withdrawn, the owner or owners should not be required to render public service at less than a fair return on the fair value of such property. Under the conditions of appellants' business, on the other hand, since no substantial capital is required, persons may enter and withdraw from business almost at random. While the more successful and efficient operators may spend a lifetime in the business, there is nevertheless no check upon the entry of new competitors. It is easy to foresee the endless chain of rate increases which the addition of new competitors might entail if it were held that they have constitutional rights to earn a profit over their actual costs regardless of the economic need for their services.

If confiscation is involved in this case, such questions as the following are presented: As a matter of law, must the rates be high enough to assure to all firms a profit over and above their

actual costs? If the rates need not be so high as to assure to all firms a profit over and above their actual costs, how many firms, or what percentage of the firms, are entitled to make a profit over and above their actual costs? If under a schedule of rates some firms can make a profit on the basis of their past actual costs and some firms cannot, are the rates confiscatory as to those firms which cannot make a profit and non-confiscatory as to those firms which can? If the rates are confiscatory as to some of the firms that sustain a loss on the basis of their past actual costs but not as to all of such firms, how much of a loss must be shown in order to render the rates confiscatory? What percentage of those firms sustaining a loss are suffering an invasion of constitutional rights? As to those firms that may make some profit under prescribed rates, are such rates non-confiscatory as to all of them or only as to those making a large profit? How much of a profit is required in order to render the rates non-confiscatory? Taking the firms shown by the table on page 56 of appellants' brief, are the prescribed rates confiscatory as to those firms showing a net owner compensation, and particularly as to the several firms showing the largest net owner compensation? If the rates are confiscatory as to all of the firms showing a net owner compensation, how much more compensation would they have to have available for owners in order to render the prescribed rates non-confis-

catory as to them? These and a multitude of other perplexing questions, none of which can be resolved by recourse to the usual tests of confiscation, would be injected into litigation of this type if the Court were to hold that a question of confiscation is presented.

Appellees contend that the fundamental question is not one of confiscation at all and that all of appellants' argument on the question of confiscation is based upon a false premise; *i. e.*, that the lawfulness of these rates can be tested by applying them to their actual costs for a given period irrespective of the reasonableness of those costs.

It is submitted that since there is in the instant case no issue of confiscation presented, the District Court erred in receiving additional evidence, and that appellees' objection (R. 181) that the testimony offered was not admissible because not properly related to the issue of confiscation should have been sustained. The testimony which was offered before the District Court is before this Court (R. 181–196) and the exhibits offered by appellants at that hearing have been printed and bound as a separate volume of the printed record on this appeal. In view of the foregoing, however, it is submitted that the testimony and the exhibits do not as a matter of law relate to any issue of confiscation, nor have they any evidentiary value in this case.

Moreover, since there is no issue of confiscation involved in this case, it results that the findings of the Secretary "must be accepted by the court as

conclusive, if the evidence before him was legally sufficient to sustain them and there was no irregularity in the proceedings" (*Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 444). The Secretary in exercising the rate-making power conferred by the Packers and Stockyards Act, is "a tribunal appointed by law and informed by experience" *Illinois Central R. R. Co.* v. *Interstate Commerce Commission,* 206 U. S. 441, 454. The same principle of judicial review, therefore, applies in this case as was stated by this Court with respect to review of orders of the Interstate Commerce Commission in *Interstate Commerce Commission* v. *Union Pacific R. R. Co.,* 222 U. S. 541, at pp. 547–548:

> Its conclusion of course is subject to review, but when supported by evidence is accepted as final; not that its decision, involving as it does so many and such vast public interests, can be supported by a mere scintilla of proof—but the courts will not examine the facts further than to determine whether there was substantial evidence to sustain the order.

This same view was reiterated in *Virginian Ry.* v. *United States,* 272 U. S. 658, when this Court said (p. 663):

> To consider the weight of the evidence before the Commission, the soundness of the reasoning by which its conclusions were reached, or whether the findings are consist-

ent with those made by it in other cases, is beyond our province.

In view of the foregoing, it is submitted that there is no issue of confiscation in this case, and that therefore the scope of judicial review defined in the above decisions applies.

III

There Is No Merit to Appellants' Contention That the Prescribed Rates Are "Ruinous" in Their Effect Upon Appellants' Businesses

Appellants' point I (appellants' brief, pp. 48–80) is devoted to the contention that the "ruinous effect of the rates upon the business of the appellants, severally and collectively, demonstrates that the order is arbitrary or confiscatory or both and should be set aside irrespective of the propriety of allowances for particular components of the rate."

The fundamental fallacy of appellants' whole argument in this respect has been demonstrated in points I and II of this brief, *supra*, pp. 14–48. This fallacy stated generally consists of (a) endeavoring to test the rates by applying them to appellants' past actual costs irrespective of the reasonableness of those costs, (b) in assuming that a showing that past actual costs will not be covered in some instances is a showing of confiscation, and (c) in assuming that there is or can be any question of confiscation in this case at all. The argument already made in points I and II of this brief demonstrates the inapplicability of the tests which appellants endeavor to apply in their point I.

Notwithstanding the irrelevance of most of the matters argued by appellants in their point I, and in the section of their brief entitled "Effect of the Rates Prescribed" (pp. 37–41), certain of the arguments made therein are so misleading as to require answer.

In the first place appellants contend (appellants' brief, pp. 51–52) that the majority of the court below held that the prescribed rates are confiscatory. This contention is apparently based upon certain statements contained, not in the opinion of the court on the merits, but in the opinion of Circuit Judge Van Valkenburgh denying a petition for rehearing. Appellants' contention in this respect is wholly without merit. The facts are that at the conclusion of the trial of this case the District Court rendered an opinion and entered findings of fact and conclusions of law to the effect that the findings of the Secretary were supported not only by substantial evidence but that if the petitioners were entitled to the independent judgment of the court upon the evidence, the findings of the Secretary were in the independent judgment of the court also supported by the weight of the evidence (R. 152). In its findings of fact the court stated that "upon an independent consideration of the evidence, including the additional evidence taken by the court," it adopted as its findings the findings of fact made by the Secretary. Judge Van Valkenburgh filed a

separate concurring opinion, in which he held that although the findings were supported by substantial evidence and that, therefore, the Secretary's order should be sustained, he was not convinced that all of the findings were supported by the weight of the evidence (R. 154–157). Thereafter, the appellants filed a petition for rehearing (R. 159–162). That petition was denied (R. 166). In denying this petition, Judge Van Valkenburgh filed a memorandum opinion, which was concurred in by Judge Reeves, in which Judge Van Valkenburgh reiterated his opinion that some of the findings of the Secretary, although supported by substantial evidence, were not supported by the weight of the evidence (R. 164–166). The petition for rehearing (R. 159–161) was based solely on alleged errors of law, and did not request a review of the evidence. Disposal of the petition did not require consideration of the evidence, nor was any additional evidence presented by appellants in support of the petition. Appellees submit, therefore, that despite Judge Reeves' concurrence in the memorandum opinion filed by Judge Van Valkenburgh in denying the petition for rehearing, it must be taken to be the fact that a majority of the court below found that the Secretary's findings were supported not only by substantial evidence but also by the weight of the evidence. Certainly that memorandum opinion did not purport to modify in any way the court's finding that upon an

independent consideration of all the evidence, including the evidence taken by the court, it adopted the Secretary's findings of fact as its own.[10]

Appellants further contend that the evidence in the record as to the "ruinous and confiscatory effect" of the prescribed rates "has been confirmed by the event," and in support of this contention they state that 9 of the 50 appellants have retired from business since the institution of this suit, and that one firm no longer continues business

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[10] It is of interest to note that, in addition to the instant case, three specially constituted three-judge District Courts have passed upon the validity of market agency rate orders of the Secretary, all of which orders were based upon the application of the same principles of rate making as the order in the present case. In none of these cases has there been any judge who thought that the enforcement of the orders should be enjoined. In *Tagg Bros. & Moorhead* v. *United States*, 29 F. (2d) 750, a master had ruled that the order there involved covering market agency rates at the Omaha stockyards was void, but a specially constituted three-judge District Court, consisting of Circuit Judge Lewis and District Judges Woodrough and Scott, upheld the order. In *C. H. Acker* v. *United States*, 12 F. Supp. 776, a specially constituted three-judge District Court consisting of Circuit Judge Alschuler and District Judges Wilkerson and Barnes upheld an order covering market agency rates at the Chicago stockyards, although District Judge Wilkerson thought that the order was not in all respects supported by the weight of the evidence. In *American Commission Co.* v. *United States*, 11 F. Supp. 965, a specially constituted three-judge District Court consisting of Circuit Judges Phillips and McDermott and District Judge Symes upheld an order of the Secretary covering market agency rates at the Denver stockyards, holding that the prescribed rates were supported by substantial evidence.

in the usual manner. They contend that as to each of these firms the Secretary's rates either failed to equal costs actually incurred or afforded wholly inadequate compensation to the owner (appellants' brief, p. 61). Appellants have filed certain affidavits in this Court to support their contention that the firms that have retired from business during the pendency of this proceeding would not have had to retire had it not been for the effect on their businesses of the impounding order.[11]

With respect to the propriety of filing these affidavits appellants have cited certain cases (appellants' brief, p. 14) to support their position that the filing of these affidavits is proper. The cases which appellants cite relate to the propriety of filing affidavits on the matter of whether or not pending litigation has become moot. The Government, however, in this case makes no contention that the case has become moot as to those firms which have retired from business but which have made deposits with the Clerk of the District Court pursuant to the impounding order. The Government has no objection to these affidavits as an appropriate means of establishing that the firms filing them still have an interest in this litigation. The Gov-

[11] These firms are listed at page 62 of appellants' brief. This table is prepared in the same manner as a table appearing on page 56 of their brief and of course the amounts shown in the column entitled "Net allowance to firms available for owners' compensation" are computed on the basis of actual costs in 1931 and not the reasonable costs.

ernment does object, however, to the use of such affidavits as a means to support appellants' argument that the "ruinous" effect of the rates has been confirmed by the evidence. The Government submits that whether or not the firms in question retired because of the effect of the Secretary's order is not a question which can be decided by this Court upon the basis of the affidavits submitted, and that the attempt to support appellants' argument on the alleged confiscatory effect of the prescribed rates by such affidavits is improper.

But it is submitted that there is nothing significant about the number of retirements from business during the period since the impounding order became effective. There is normally a substantial turnover among the firms doing business at the Kansas City stockyards. From the time that the Packers and Stockyards Act went into effect until the first hearing before the Secretary in this proceeding—a period of great prosperity—166 firms retired from business (Resp. Ex. 61). The findings in this case show that between the first and second hearings before the Secretary—a period of less than two years and before impounding commenced—18 firms retired from business (R. 31, 33). Appellants now seem to contend that there is something extraordinary that reflects upon the reasonableness of the Secretary's order because 10 firms have retired from business since the impounding order went into effect on July 22, 1933. Obviously,

the retirements from business since the impounding order was entered have been no greater than the normal retirements for a similar period of time in the market agency business as carried on at Kansas City; and, indeed, the number of retirements since the impounding order has been in effect has been only a little more than half as great as the number occurring during the period between the two hearings although the period between the two hearings was less than two years, while the impounding order has already been in effect over two and one-half years.

Appellants further argue that the yield of the rates as shown by the evidence in this case is in decided contrast to the yield of the rates as shown in the *Tagg Bros. & Moorhead* case (appellants' brief, pp. 64–69). In support of this contention, appellants have reproduced a schedule from the record in the *Tagg Bros. & Moorhead* case showing the income that would have been received per owner at the Omaha stockyards if the rates prescribed for that market had been in effect in 1925. They compare this showing with the table at page 56 of their brief setting forth the compensation per owner that would have been available in 1931 at the Kansas City stockyards under the rates challenged herein.

A comparison of the conditions at the Omaha stockyards during the test year employed in the *Tagg Bros. & Moorhead* case with the conditions at the Kansas City stockyards during the test year

employed in the present case shows a notable difference in favor of the Omaha stockyards as to the volume of animals handled, although the number of salesmen and market agencies at the two stockyards during the respective test years was approximately the same. This is an indication that the Kansas City stockyards in 1931 was obviously over-manned in comparison with the Omaha stockyards in 1925. Under such circumstances, it is natural and proper that a reasonable schedule of rates would yield a much higher net owner return for the market agencies at the stockyards having the larger volume.[12]

IV

The Rates Prescribed by the Secretary Were Determined by a Lawful Method

Section 305 of the Packers and Stockyards Act provides that all rates or charges made for stockyards services furnished by market agencies shall be just, reasonable, and non-discriminatory. Un-

[12] A comparison of the volume of livestock handled at Omaha in 1925 with that handled at Kansas City in 1931 follows:

Comparison Volume—Omaha, 1925; Kansas City—1931—Tagg Bros. & Moorhead Record 828–829—Kansas City (Less Cooperatives), Gov. Ex. 115

Selling	Omaha—1925	Kansas City—1931
	Cars	*Cars*
Cattle and calves	64,832	57,264
Hogs	45,984	13,099
Sheep	9,145	8,021
Total	119,961	78,384

der Section 310 of the Act the Secretary of Agriculture is charged with the duty of investigating the reasonableness of rates and charges made by market agencies and is authorized to determine and prescribe just and reasonable rates and charges. In the exercise of this duty, the Secretary initiated the instant proceedings to determine the reasonableness of the rates and charges collected by the market agencies operating at the Kansas City stockyards and, after two hearings, he entered the order prescribing the maximum rates which are now attacked by appellants.[13]

In paragraph 114 of his findings the Secretary stated the principles of rate-making which he applied:

> The Packers and Stockyards Acts provides that if, after investigation, the Secretary of Agriculture finds commission rates in effect at a livestock market to be unjust, unreasonable, or discriminatory, he shall prescribe rates that are just, reasonable and non-discriminatory, or the maximum or minimum rates, or the maximum and minimum rates, which are just, reasonable and non-discriminatory. In arriving at such a schedule it is necessary to adopt a guide

[13] The voluminous record in this case indicates the care and thoroughness with which the investigation of the conditions under which appellants conduct their businesses at the Kansas City stockyards was carried out. The two hearings lasted in the aggregate more than three and one-half months, and all matters which might possibly affect the problem were developed in the evidence.

> to reasonableness. The guide adopted in this case is that under ordinary conditions as they prevail on the Kansas City market, a schedule of rates should be high enough to produce sufficient gross revenues to pay all reasonable costs and a reasonable compensation for management and risk, that is, a reasonable profit, to the owner or owners of any firm which receives enough livestock to enable it to handle its business in a reasonably efficient and economic manner. This principle was followed in the Omaha Commission Rate Case, and was approved by the Supreme Court of the United States in the case of *Tagg Bros. and Moorhead et al.* v. *United States* (280 U. S. 420). It becomes necessary, therefore, in following this guide to determine the reasonable costs to the respondents of handling each species of livestock. [R. 83.]

It is appropriate that brief discussion be given to the specific steps which the Secretary followed in applying the above principles and in arriving at a determination of maximum reasonable rates. The process of investigation began by having individual audits made covering the business of each firm for the year 1929 (Gov. Ex. No. 14). In preparation for the rehearing similar audits were made for the year 1931 (Gov. Ex. 114). These audits were accepted by the appellants as constituting true reflections of the facts disclosed by their books and records of account for the periods covered. (R. 86–87, 988, 1017–1018.) They were used as the

basis of all computations made by both the accountant for the Government and the accountant for appellants. Both the accountant for the Government and the accountant for appellants, in making their respective analyses of the business, established classifications of expenses to which they assigned the specific cost items. The classification adopted by the Government accountant and that adopted by appellants' accountant are quite similar and are set out in the Secretary's findings (Par. 123, R 87–88). The Secretary, however, upon consideration of the case as a whole, prepared a classification of costs and other rate elements which did not quite conform to either of the classifications prepared by the accountants (R. 122), but which included all of the substantial items of cost considered by the accountants. Using such classification, he prepared functional cost tables setting forth the actual costs of each market agency by functions for the year 1931. He also classified costs into two groups, namely, (1) costs which the conditions of the business tend to keep down, and (2) costs which the conditions of the business tend to increase (R. 91), as follows:

A. Costs which the conditions of the business tend to keep down:

1. Yarding salaries.
2. Yarding expenses.
3. Office salaries.
4. Office expenses.
5. Administrative and general.

6. Insurance.
7. Interest on investment.

B. Costs which the conditions of the business tend to increase:

1. Salesmanship costs.
2. Business getting and maintaining costs.

This classification is based upon the fact that any agency of ordinary efficiency will, as a matter of common business sense, use its best efforts to avoid paying out any more money than is necessary on account of the items of cost designated by the Secretary as costs which the conditions of the business tend to keep down and this attitude is not affected by any unusual condition existing at the Kansas City market. On the other hand, it is found by the Secretary (R. 109), and is undisputed by appellants, that competition among the market agencies at Kansas City for the volume of business offered to the market as a whole is extraordinarily intense. All of the agencies in fact charge uniform rates for the services rendered by them (R. 216, 753, 708), and each agency endeavors to attract business away from the other agencies by the various means hereafter described under the portions of this brief devoted to salesmanship costs and business getting and maintaining costs. Since the volume of business coming to the market as a whole is not increasing—it appears to be gradually decreasing (R. 516, 765, Gov. Ex. 32)—competitive costs have tended to increase as the competitive struggle has become intensified.

In the class of costs which conditions of the business tend to keep down, the Secretary, having prepared functional cost tables, proceeded to determine from them a normal or reasonable functional unit cost for each function.[14] The functional cost tables are set forth in paragraphs 144–158 of the Secretary's findings (R. 98–104, 110–115, 118–120). As to this class of costs, the Secretary's allowance for each function was higher than the actual cost incurred for that function by a substantial number of firms. For many of these functions the Secretary's finding of reasonable costs exceeds the average actual unit costs of all the firms.[15]

The following table is a comparison of the unit costs found by the Secretary to be reasonable for each function distributed to each species, and the weighted average actual unit costs of all of the firms for each of the functions as to which the conditions of the business tend to hold the costs down:

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[14] The allowance for insurance, which is a relatively minor item, was determined by using actual quotations of insurance premiums applicable to the market as a whole and reducing the resulting figures to a per head basis (R. 115–117). This method was followed, rather than basing the allowance upon actual expenditures for premiums, because some of the firms did not carry insurance but instead carried their own risks.

[15] The Secretary's findings as to reasonable unit costs are found on page 122 of the record. The average unit costs actually incurred are computed from figures contained in Government Exhibits 115 and 115B.

	Cattle and calves		Hogs		Sheep	
	Reasonable	Average	Reasonable	Average	Reasonable	Average
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
Yarding salaries	7.50	7.04	3.00	3.69	0.80	0.57
Office salaries	5.25	4.80	3.00	2.78	1.00	.81
Yarding expenses	1.40	1.10	.60	.03	.04	.004
Office expenses	3.00	3.09	1.75	1.82	.50	.49
Administrative and general expenses	3.30	3.33	2.00	1.89	.50	.53
Insurance	.70	1.39	.25	.53	.13	.27
Interest	1.50	.84	.70	.30	.40	.13
Total	22.65	21.59	11.30	11.04	3.37	2.804

In determining the allowances for the other class of costs—i. e., those which the conditions of business tend to increase, and which consist chiefly of salesmanship and business getting and maintaining—the Secretary used different methods from those just described.

The Secretary determined the reasonable unit costs of salesmanship by relating a reasonable annual salary for a salesman to a reasonable year's performance expressed in terms of the number of head of livestock sold (Par. 134–143, R. 92–97). The method used for determining reasonable salesmanship costs is the same as that which was employed by the Secretary in prescribing rates applicable to the market agencies doing business at the Omaha stockyards. That method was summarized in the opinion of the District Court in *Tagg Bros. & Moorhead* v. *United States,* 29 F. (2d) 750, as follows (pp. 754–755):

> The plaintiffs say that the per car limit for selling is so low that it is not compensa-

tory, that it is below actual cost, that it is confiscatory, and that it will cause many of them to do business at a loss, and so be driven out of business. There is no uncertainty about how the Secretary came to use the per car limit for selling as a cost item in service in arriving at the rates in his schedule. It was shown to the Secretary that some of the men who do this selling on the market sell a great many cattle, and some sell very few. Some are working for high wages, and some for much lower, and others again, as owners of the business, charge all there is left in the business, after paying expenses, to this selling job performed by themselves.

The Secretary was not concerned with nor attempting to say just what a cattle salesman should be paid. It was his task to find a maximum per car for this work, beyond which anything charged would be unreasonable. To that end he considered how many cars a man could sell in a day, if he had the cars to sell, and also how many cars the men engaged actually do sell in the course of the business. From the whole the Secretary concluded that good cattle and sheep salesmen were being paid salaries of $5,000, and hog salesmen $4,000, and that any good cattle and sheep salesman can readily sell 1,000 cars of cattle or sheep in a year, if he has that many to sell, any good hog salesman could easily sell 1,333 cars of hogs in a year. There was in fact uncon-

tradicted proof that each could sell many more cars. If he sells more cars per year, as some salesmen do, the Secretary has done nothing to prevent more than $5,000 being paid to the salesman, either as a wage or as a charge against the business, if the salesman is the owner.

The only difference in the type of salesmanship findings made in the order attacked in the *Tagg Bros. & Moorhead* case and those in the present case is that in the order involved in the *Tagg Bros. & Moorhead* case they were found on a per car basis, whereas in the order involved here they were found on a per head basis.

In determining the proper allowance for business getting and maintaining the Secretary took into consideration, in addition to the functional cost table (R. 104–109), the unusual competitive condition at the market, and upon the basis of all the facts in the record found a reasonable unit allowance to be covered into rates for business getting and maintaining (R. 109–110). This he did by taking cognizance of the fact that the cost of business getting should obviously be related to the amount of business obtained by taking a percentage of the total reasonable costs and profits—which represent the reasonable gross income of the business—that percentage being higher than the percentage actually spent for business getting and maintaining by many of the firms in business.

That the method employed by the Secretary for determining reasonable rates in the present case is a lawful method necessarily follows from the fact that it is the same method that was employed in the order involved in the *Tagg Bros. & Moorhead* case. The problem with which the Secretary is faced in determining reasonable rates was stated by the District Court in the *Tagg Bros. & Moorhead* v. *United States,* 29 F. (2d) 750, as follows (p. 753):

> Accordingly it falls to the Secretary, under the Packers and Stockyards Act, to consider what rate is high enough to compensate the efficient, low enough to restrain destructive scrambles for the business among too many agencies, and within the margin of the value of the service to the shippers, and on the whole case to fix reasonable rates, just to all; a most delicate function obviously, but, if necessary, possible.

The method used in that case by the Secretary was epitomized as follows (p. 753–754):

> To that end he must and does have the power to inquire into all of the details of the marketing agencies' business, as it has been and is carried on, and to fix a maximum price, reasonable and proper to be charged. It appears to us from the evidence that the Secretary, through the various steps leading up to his final order, has been guided by proper considerations. He accorded the parties in interest a hear-

> ing, and from oral evidence and extensive audits of each and all of the marketing agencies concerned the Secretary undoubtedly had data before him sufficient to build up a rate schedule. He had disclosed to him each and all of the details and items of expense that go to the performance of the function; he found a maximum reasonably chargeable for each detail, and, adding them together, he fixed a maximum charge for the whole service.

The fact that the results of the application of the method may in some respects have been different in this case from what they were in the *Tagg Bros. & Moorhead* case in no way detracts from the validity of the method. In *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 442, this Court found that the evidence before the Secretary amply supported the findings and conclusions reached by him. Whether the evidence amply supports the findings in this case is a separate question which will be presently discussed, but it is a question quite apart from the validity of the method. As to the validity of the method, there can be not the slightest doubt after a comparison of the Secretary's findings and order in this case with those made at the Omaha stockyards and upheld in the *Tagg Bros. & Moorhead* case.

V

The Prescribed Maximum Rates Admittedly Would Have Yielded in 1931 More Than the Costs and Profits Found by the Secretary to be Reasonable

The prescribed maximum rates would have yielded in 1931 a substantial margin over and above the costs and profits found by the Secretary to be reasonable. Appellants have not individually or collectively attacked the adequacy of the prescribed rates to produce the costs and profits found by the Secretary to be reasonable, and indeed there would have been no possible ground for such an attack because the facts in this respect are not open to dispute.

By applying the Secretary's reasonable per head costs and profits to the total volume of the several species arriving at the Kansas City stockyards during 1931 (R. 122, Appellants' Ex. 4), the total reasonable costs and profits for all species for that year can readily be ascertained. Such an application results in the figures found in the first column in the table following. The figures in the second column indicate the revenues which would have been produced in 1931 per species by the prescribed maximum rates as shown by "Petitioners' Original Exhibit No. 4." The third column indicates the margin which the rates would have produced over and above the reasonable costs and profits.

	Revenues under rates	Reasonable costs and profits	Margin
Cattle and calves	$1,186,083.25	$1,115,168.88	$70,914.37
Hogs	270,966.23	233,421.76	37,544.47
Sheep	159,379.56	117,625.49	41,754.07
Total	1,616,429.04[1]	1,466,216.13	150,212.91

[1] This computation does not take into account additional revenue amounting to $48,430.27 which appellants are free to collect by applying the buying rates prescribed by the Secretary.

Thus, in addition to the separate allowance made in the rates for profit, the prescribed rates would have produced if they had been in effect in 1931, $150,212.91 in excess of the costs and profits found by the Secretary to be reasonable.

This liberal margin which the rates will yield over and above reasonable costs and profits supplies additional revenue which in normal course will be additional profit. It also furnishes a cushion to offset any possible error which may have crept into the calculations made in determining reasonable costs. This margin, moreover, furnishes a protection against possible temporary hardship which may occur from time to time through normal fluctuations in marketing conditions. The undisputed presence of this liberal margin over and above the costs and profits found by the Secretary to be reasonable considerably simplifies the case and narrows the issue in the final analysis to the reasonableness of the Secretary's cost findings and the sufficiency of the evidence upon which they rest.

VI

The Secretary's Findings With Respect to Reasonable Unit Costs and Profits Are Supported by Substantial Evidence

The adequacy of the Secretary's findings is to be tested solely by whether there is substantial evidence to support them—if there is, the findings should stand. It is immaterial whether some of the evidence was irrelevant or of little weight, or whether the Secretary's reasoning is in all respects persuasive, or whether no conclusions other than the ones adopted by the Secretary could conceivably be drawn from the evidence, or whether his findings are severe or generous as to particular items of cost. This is the rule as to the scope of review laid down by this Court in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420,[16] and no circumstance exists in this case which justifies the application of a different rule.

Much of appellants' argument on the evidence does not affect the essential validity of the Secretary's findings. Some of appellants' contentions are directed to alleged errors in the Secretary's reasoning, others to the effect of conflicting evidence, others to the relative weight which should be given to different kinds of evidence. For example, appellants insist that the Secretary gave too much importance to opinion evidence with re-

[16] See particularly the passage in the opinion at page 442.

spect to the number of animals that a salesman might reasonably be expected to sell and not enough weight to evidence as to the seasonal variations in the arrival of livestock. Appellees submit that these criticisms, considered on their merits, carry little weight, and that in any event they are of no importance and afford no basis for rejecting the Secretary's findings. The burden is on appellants to show that these findings were made arbitrarily and without substantial evidence to support them, and appellants have failed to sustain this burden.

At the conclusion of the trial of this case in the court below, as has been pointed out on pages 49–51, that court held not only that the findings of the Secretary were supported by substantial evidence, but also, that if the petitioners were entitled to the independent judgment of the court upon the evidence, those findings were in accordance with the weight of the evidence (R. 152); and the court "upon an independent consideration of the evidence, including the additional evidence taken by the court," adopted as its own findings the findings of fact made by the Secretary (R. 153).

Appellees will now consider the evidence which supports the Secretary's findings and the attacks made by appellants upon that evidence.

A. THE SECRETARY'S FINDINGS AS TO THE REASONABLE COSTS OF SALESMANSHIP ARE FULLY SUPPORTED BY THE EVIDENCE

The Secretary's findings as to the reasonable cost of salesmanship are found in paragraphs 142 and 143 of his order (R. 97) and are as follows:

> Giving due consideration to the conditions under which salesmanship is performed on the Kansas City market, the volume of livestock handled by the respective firms and the estimates of salesmen as to what constitutes a reasonable year's work, it would be reasonable to expect a good and experienced salesman to sell in a year from 27,000 to 32,000 head of animals of the bovine species as they arrive at the Kansas City stockyard in the year 1931; a hog salesman from 75,000 to 100,000 head of hogs in a year; and a sheep salesman from 240,000 to 275,000 head of sheep.
>
> If the selling of 29,000 head of cattle and calves, which is below the estimate of any witness as to what constitutes a reasonable year's work, be taken as the work to be done in order to earn a salary of $4,000, which is in the high salary range being paid salesmen on the Kansas City market, the reasonable cost to the shipper on account of the function of salesmanship is 13.79 cents per head. Likewise, if the selling of 85,000 head of hogs be considered a reasonable year's work, and $3,000, which is in the high salary range, be taken to be a corresponding remuneration, the salesmanship cost to the

shipper on account of hogs is approximately 3.529 cents per head. If the selling of 250,000 head of sheep be considered to be a year's work for which a $3,500 a year salary is compensatory, the reasonable per head cost to the shipper for salesmanship on account of sheep is 1.4 cents per head. On the basis of all the facts in the record it is found that the following constitute reasonable per head costs to be covered into rates on account of salesmanship:

Cattle and calves	$.1379
Hogs	.0353
Sheep	.0140

In making these findings, the Secretary took into consideration all of the functions and duties which a salesman ordinarily performs.[17]

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[17] The Secretary in paragraph 115 of his order (R. 84) states:

> * * * a salesmen cannot sell livestock except when the market is open and more or less active, notwithstanding the volume of livestock which he had for sale. On the other hand, the type of men who make good salesmen would hardly be content to accept less salaries in consideration of short hours. They demand and get good pay and are willing to return therefor a reasonable day's and week's service. Therefore, the fact, that prior to the selling hours they assist in the yards and that, during the last one or two days of the week they go to the country to appraise livestock and solicit business do not increase the respondents' expenses for salaries. Therefore, in the distribution of costs hereinafter made to functional accounts, the services of a salesman, for instance, are not divided as between selling, yarding, office work and business getting and maintaining, but are considered as being covered by the reasonable allowance for salesmanship.

Appellants have attempted to create the impression—which is contrary to fact—that the Secretary has limited the number of salesmen at the Kansas City market and fixed the salaries which are to be paid to these salesmen. This conclusion of appellants is based upon a misunderstanding of the Secretary's method of determining unit costs for salesmanship—a misunderstanding which attributes to the Secretary a method far more involved and complicated than the one actually employed. Appellants state (appellants' brief, p. 105–106):

> The Secretary has, therefore, divided the total number of each species sold by the hypothetical performance assumed, for the purpose of determining the number of salesmen required to conduct the business on such hypothesis, and then multiplied the assumed annual service value per salesman by the number of salesmen so determined. Having thus arrived at the total cost of salesmanship for each species, this figure is in turn divided by the total number of each species handled, whether bought or sold (although the evidence shows that the cost of selling exceeds the cost of buying),[18] and the quo-

[18]Appellants throughout their argument relative to the Secretary's estimate of salesmanship costs have inserted such confusing and misleading statements as to buying costs being lower than selling costs. Whether or not this is true as to the total cost of handling sales as compared with the total cost of handling purchases is open to question (see *infra*, p. 164). If it is true, appellants have admitted that the reason lies in lower yarding and business getting and maintaining costs as

tient adopted as the reasonable cost of selling per head for each of the several species.

In fact the Secretary used no such involved process in determining salesmanship costs. As shown by the plain words of his order (Par. 143, R. 97, quoted above), he determined the reasonable salary for an efficient salesman and then associated that salary with the selling performance which such a salesman might reasonably be expected to attain. He then divided that salary by the volume associated with it in order to obtain the reasonable per head cost of selling any particular species. To be specific, the Secretary associated the selling of 29,000 head of cattle and calves with a salary of $4,000 and determined that the per head allowance for salesmanship should be $0.1379 for that species. He associated the selling of 85,000 head of hogs with a salary of $3,000 and determined that the per head allowance for salesmanship

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to purchases (appellants' brief, pp. 59–60, fn. 2) rather than lower buying salaries. There is no contention that the Secretary was wrong in finding (par. 165, 168, R. 122–123) that, for the most part, the same personnel did the buying and the selling, and that a good buyer could buy as much livestock as a good salesman could sell.

In any event appellants state "* * * the appellants do not attack the maximum buying charges, but on the contrary take the position that they are, in fact, too high, being mere 'paper rates' which can not in practice be charged and are not being charged by the appellants" (appellants' brief, p. 5). The appellants are under no legal obligation to charge the maximum buying rates, and it seems clear that so far as those rates are concerned they have no ground for complaint.

should be $0.0353 for that species. For sheep he associated the selling of 250,000 head with a salary of $3,500 and determined that the per head allowance should be $0.014 for that species.[19] This method did not contemplate the limiting of the number of salesmen to be employed at the Kansas City market nor the fixing of the salaries which were to be paid to those salesmen.

The Secretary determined a reasonable salary figure and a reasonable performance figure, not because those figures considered by themselves had any interest for him, either for the purpose of limiting salaries or the number of salesmen, or for any other purpose, but because those figures were the only reasonable means of accomplishing the end which he had in view, that is, the computation of a reasonable cost for selling a unit of livestock. The fact that the Secretary associated a performance figure with the salary figure does not indicate that he expected every salesman in the market to equal that performance or to receive that particular salary. For example, approximately 86.5% of all the employed salesmen selling cattle and calves at the Kansas City market in 1931 received less than $4,000, the salary figure which the Secretary used in determining reasonable salesman-

[19] The mathematical calculations were as follows:
$4,000 ÷ 29,000 = 0.1379.
$3,000 ÷ 85,000 = 0.03529
$3,500 ÷ 250,000 = 0.014

ship costs.[20] The Secretary obviously did not contemplate that the salaries of 86% of the salesmen should be raised to $4,000, nor did he contemplate that those salesmen who received less than $4,000 should now or hereafter attain the performance figure which he used in determining reasonable costs. Appellants in various portions of their brief [21] have misinterpreted and misconstrued the Secretary's order as illustrated by their statement that "the number of cattle salesmen and of sheep salesmen would thus have to be cut in half and the number of swine salesmen would have to be quartered" (appellants' brief, p. 107), and by their repeated characterization of the figures as "Standards," as if the Secretary had decreed how many head of livestock a salesman is to sell and what salary he shall receive. The effect of such statements is to distort the Secretary's findings and order and to inject false issues into the case. The order in no way reduces the number of salesmen or fixes the salaries for salesmen.

Each firm is free to pay its salesmen whatever salary its business justifies.[22] A salesman may be

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[20] See p. 79, *infra*.

[21] For example see the footnote on pages 92 and 93 of appellants' brief, pages 106–107, and the footnote on page 106.

[22] This was clearly stated by the Secretary in his order (Par. 135, R. 94):

> It [the Secretary's method] finds a reasonable compensation to the respondents for the performance of a unit of salesmenship, whether it be done by owner

paid according to his individual ability, according to his value to the firm, or according to any other factors which his employers desire to consider. If a commission firm wishes to employ two men to do the job which one might reasonably be expected to do, it is free to do so. It is equally free to employ one man to do the job which two might reasonably be expected to do.

Examination of appellants' argument discloses that their principal objection is not to the action of the Secretary in computing unit costs by associating a salary figure with a performance figure, but rather to the particular performance figures which the Secretary selected for that association.

Appellants characterize these figures as "hypothetical" and as "unsupported by and in variance with actual experience" (appellants' brief, p. 108). Such characterizations do not discredit the evidence upon which the Secretary's findings rest. The absolute inadequacy of actual costs as a test of reasonableness has been explained above (pp. 20–32). As will be explained later in this brief

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or employee, and leaves the firm in position to expand or contract its reasonable income as it proves successful or unsuccessful in applying the unit of salesmanship performed. To illustrate, if a fair annual salary is taken as $4,000 and a reasonable full year's performance as the sale of 29,000 head of cattle, then the reasonable allowance for salesmanship will be 0.1379 cents per head and the owner who is able to sell 35,000 head will be entitled to a compensation of $4,826.50, while one who succeeds in selling only 20,000 head will be entitled to only $2,758.

(pp. 90–100), the Secretary had before him evidence as to abnormal conditions in the Kansas City stockyards which compelled him to reject the average cost of salesmanship to all market agencies, or the salesmanship costs of some "typical and representative" market agency (to use the appellants' own words, appellants' brief, p. 89) as a test of reasonableness.

To the extent that appellants use such epithets as "hypothetical" for the purpose of suggesting that no salesman in the Kansas City market has attained or can attain the performance figures selected by the Secretary, or that the salary figures which he used were unreasonably low, appellants either ignore or distort the facts. There is ample evidence in the record that the salary figures selected by the Secretary are reasonable and that salesmen operating in a reasonably efficient manner and under circumstances permitting such reasonable efficiency can sell the volume of livestock which the Secretary has associated with these salary figures.

1. The Evidence Fully Supports the Salary Figures Selected by the Secretary

For the purpose of determining the reasonable cost of selling a unit of livestock, the Secretary selected the following annual salary figures (R. 97):

Cattle and Calves	$4,000
Sheep	3,500
Hogs	3,000

Appellants make no serious attack on these salary figures[23] apart from the fact that they have been associated with performance figures which appellants claim are excessive.

The Secretary's selection of salary figures was based upon an examination of the salaries actually paid in the Kansas City market to those salesmen whose salaries are fixed in arm's length bargaining.[24] The following table shows the number of employed salesmen and buyers in 1929 and 1931

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[23] Here, as in *Acker* v. *United States, et al.*, No. 655, October Term, 1935, which has been submitted to this Court, the market agencies appointed a committee which appraised the value of the services of the owners. Appellees submit that these appraisals are not entitled to any consideration in the determination of reasonable costs. This question is not discussed herein because appellants in their brief have not relied upon these appraisals nor attempted to use them as the basis for an attack upon the salary figures selected by the Secretary.

[24] In selecting salary figures the Secretary discarded (a) the appraisals of the value of owners' services referred to in footnote 23 above, (b) the salaries which owners had set up for themselves on the books, and (c) profits received by the owners. Instead, he accepted as the test of salesmanship costs the salaries which the owners were compelled to pay to those salesmen they employed in arm's length bargaining. The reasonableness of the Secretary's action is obvious. The appraisals do not represent actual out-of-pocket expenses but were excessive, hypothetical figures selected by a committee appointed by market agencies. The amounts of the salaries which the owners had set up on their books for themselves were fixed entirely at the owners' discretion and bore no relation to the reasonable cost of salesmanship. The propriety of discarding profits as a test of salesmanship costs is hardly open to question.

for each species of livestock and the salary classifications into which they fall (Gov. Ex. 15, pp. 121–125; Gov. Ex. 115, p. 85):[25]

Salesmen and buyers

CATTLE SALESMEN AND BUYERS

	1929	1931
Number receiving—		
$6,000 or more	6	4
$5,000 to $6,000	3	5
$4,000 to $5,000	13	9
$3,000 to $4,000	38	32
$2,000 to $3,000	30	50
Less than $2,000	32	33
Total	122	133

HOG SALESMEN AND BUYERS

Number receiving—		
$5,000 or more	1	2
$4,000 to $5,000	2	1
$3,000 to $4,000	10	4
$2,000 to $3,000	16	20
Under $2,000	13	19
Total	42	46

SHEEP SALESMEN AND BUYERS

Number receiving—		
Over $5,000	1	1
$4,000 to $5,000	2	1
$3,000 to $4,000	4	2
$2,000 to $3,000	3	6
Under $2,000	1	4
Total	11	14

This table indicates that in 1931 86.5% of all the employed cattle and calf salesmen received less than $4,000, the salary figure used by the Secretary, and

[25] These figures, which include the salesman and buyers of the two cooperative firms, indicate that there were more employed salesmen for all species in 1931 than in 1929.

that 84.8% of the employed hog salesmen received less than $3,000, the salary figure selected by the Secretary. Government Exhibit 115, page 85, shows that in 1931 85.7% of the sheep salesmen received salaries not substantially greater than $3,500, the salary figure selected by the Secretary.[25a]

The average salary for employed cattle and calf salesmen in 1931 was $2,807, for hog salesmen $2,356, and for sheep salesmen $2,855. The median salary in 1931 for cattle and calf salesmen was $2,400, for hog salesmen $2,177, and for sheep salesmen $2,449. (Gov. Ex. 115, p. 85.)

2. *The Secretary's Selection of Figures as to Salesmanship Performance Is Fully Supported by the Evidence*

For the purpose of determining reasonable unit selling costs the Secretary associated with the salary figures, discussed above, the following figures as to annual salesmanship performance (R. 97):

	Head
Cattle and Calves	29,000
Sheep	250,000
Hogs	85,000

These figures are attacked by appellants as "hypothetical." Admittedly, the great majority of the salesmen in the Kansas City market did not in 1931 sell the volume of livestock represented by these figures. This fact should be considered, however, in the light of the conditions of overmanning and excessive competition which prevailed in the Kansas City stockyards and which inevitably re-

[25a] This percentage figure includes one salesman who receives $3,533.32. (Gov. Ex. 115, p. 85.)

duced salesmanship performance, among the more efficient as well as the less efficient salesmen, far below a reasonable figure.

Appellants' insistence that these performance figures are "hypothetical" and therefore must be rejected is, in reality, an attack upon the basic principle of the rate-making method which the Secretary has employed and not an attack upon the evidence which he had before him. Appellants insist that only one kind of evidence can properly support a finding by the Secretary as to salesmanship performance and that is evidence that a large number of salesmen actually attained the performance figures selected by the Secretary. This is merely another aspect of appellants' basic contention that the Secretary should prescribe rates which will cover the actual costs incurred by appellants and, as has been explained above, this contention is designed to defeat and nullify the rate-making power conferred upon the Secretary by the Packers and Stockyards Act; if the Secretary is chained to actual costs, the existence of unreasonable and extravagant costs will automatically make it impossible for the Secretary to prescribe reasonable rates.

The salary figures selected by the Secretary are "hypothetical" only in the sense that they are a determination of what a salesman can do if he operates in a reasonably efficient manner under circumstances permitting such reasonable efficiency. Any determination by the Secretary which does not merely adopt actual costs but in-

stead attempts to adjust and correct these costs so as to bring them into conformity with a standard of reasonableness, must be "hypothetical" in this sense. But on the other hand, the performance figures used by the Secretary are not "hypothetical" in the sense that they are completely imaginary and incapable of realization. In the case of each species there was substantial evidence before the Secretary which supported the findings.

The performance figures selected by the Secretary are approximately equivalent to 1,000 cars of cattle and calves and 1,000 cars of sheep and 1,133 cars of hogs. Mr. W. S. Angle, manager of the Producers Commission Association, a cooperative market agency at Kansas City, testified: [26]

> Q. Now, considering all those things and including all the classes of cattle, all the kinds, including the truck-ins as well as those that come by rail, and taking them as they do come, that is taking into considera-

[26] Appellants' claim that Mr. Angle was not qualified to testify as to salesmanship performance is obviously unfounded (appellants' brief, p. 121). This witness was manager of one of the four largest commission firms at the Kansas City market. He testified that he had been associated with the livestock industry practically all of his life (R. 333) and had specialized in agricultural work at Missouri University (R. 333–334). Certainly he was capable of judging the reasonable performance for a good salesman and his testimony clearly shows that he understood the matter as to which he was testifying and took into consideration all pertinent factors in giving his answers. A perusal of the subsequent cross-examination by appellants' counsel (R. 343–345) shows that counsel was unsuccessful in attempting to break down the force of the witness' testimony. When the witness

tion that there are peak periods in the year that you cannot get them evenly distributed throughout the year and that you cannot get them evenly distributed throughout the week, considering all these things and the conditions as they exist right now, I do not mean just as confining your considerations to this past week, but considering present conditions of an annual basis at Kansas City, and expressing it in terms of carloads, would you say that if a good cattle salesman had that many cattle to sell he could dispose of 1,500 carloads in a year and do it as it should be done?

A. Yes, sir.

Q. Do you think he could dispose of any more than that number, Mr. Angle?

A. Yes, I do. [R. 339–340.]

The witness, on being asked whether or not a butcher cattle salesman could handle as many as 1,500 cars a year, replied:

> Taking the butcher cattle as they come on our market, carloads and mixed lots of butcher cattle, I would say yes. [R. 341.]

On being asked how the sale of hogs would compare with the sale of cattle, Mr. Angle testified:

> I am inclined to feel that men of like capacity, that the number of cars that either

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showed a disposition to testify as to his knowledge of actual individual performances of salesmen at the market, counsel insisted on holding him to average salesman performance for his firm (R. 343). If this witness had not meant exactly what he said, the fact would certainly have been developed in the course of the cross-examination.

> could sell, the hog man as compared to the cattle man, would not vary a great deal. The same principle applies in one department that applies in the other. [R. 341.]

When asked how many cars of sheep a good salesman could properly handle in a year, W. S. Angle, manager of the Producers Commission Association, replied:

> I should think that, conservatively, he could handle 1,500, or 2,000 cars [This refers to single deck cars]. [R. 342.]

Mr. W. B. Ecton, a cattle salesman for the Producers Commission Association, testified as to 1929 as follows:[27]

> I cannot give you any estimate of the number of cars of cattle I have sold this year. I have sold 75 to 100 cars lots of days in Chicago. I never had that many here. I could not sell 75 to 100 cars a day at the Kansas City market under present conditions. There are days when you can sell a large number of cars. * * * We have had days in which I have sold as many as 25

[27] Appellants have attacked Mr. Ecton's testimony on the ground that the salesmen of the firm which employed him had an average salesmanship performance of 432 cars in 1929 and that consequently the witness had not attained the performance-figure to which he testified. But the average of all the salesmen of the firm throws no light on Mr. Ecton's individual performance. Furthermore, Mr. Ecton's testimony can be taken as indicating that the firm did not receive a sufficient volume to enable its salesmen to exercise their full ability.

cars of cattle. One day this week we had 20 cars of cattle, and we got rid of them early. I sold the most of them myself. If the demand is right, we sell 25 just as easy as 5. From September on through the fall of the year we have our heaviest run of fat cattle. Taking the market as it is, and considering how the cattle come, a salesman could sell more than 1,500 cars of cattle in a year. I think he could sell more than 2,000 cars a year. I would be perfectly safe in saying he could sell 3,000 cars in a year. I am referring mostly to the class of cattle that I handle. In the feeder class, a man could sell more than that because they come in big bunches. I don't know how many a regular butcher man could handle. I don't think he could sell as many as 2,000 the way the shipments come to this market. The butcher cattle take more work and more time than the other kinds of cattle. We try to sell every day, and we carry over very little. [R. 365.]

* * * * *

There are 208 active market days during the year. If you looked around the yards there would be a lot of cattle salesmen going at 12 o'clock, if they got through down there. A lot of them leave the yards whenever they get through. I never heard of it if they stay there until 10 or 11 o'clock at night. There is nobody working on Sunday, unless it would be the office man or the watchman. * * * There is no doubt in my mind but that a cattle salesman could handle 3,000

cars in a year. I have never had a chance to handle that many on this market, but I feel sure that it could be done. [R. 367–368.]

Mr. John W. Murphy, a cattle salesman for the Bowles Livestock Commission Company, testified that, although he did not know how many cars of cattle he had in 1929 or 1930, he thought that he had, in his experience, handled as many as 1,500 cars of cattle in a year (R. 325–326). It was his opinion that under existing conditions at the Kansas City market he could handle the equivalent of 1,500 cars of cattle if he had them to sell (R. 327).[28]

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[28] Mr. Murphy's testimony reads as follows (R. 326–327):

Q. Now, taking your business as it is, how many cars do you think a good salesman could sell in a year, if he had them to sell?

Mr. GAGE. Now, just a minute. I object to that question. It is just as ridiculous and foolish to be asking questions like that in this hearing, as it would be to ask in a rate hearing, involving the rates of the Union Pacific Railroad Company for freight, how many tons of traffic they could handle in a year. It has nothing on earth to do with it, and wholly immaterial to any issue here. You can ask how many they have sold.

The EXAMINER. Objection overruled.

The WITNESS. Do I understand I am to answer that.

The EXAMINER. If you know; yes, sir.

A. I don't think there is a human being on earth could tell.

Q. Do you think he could handle as many as 1,500 cars and handle them properly?

Mr. GAGE. Objected to.

A. Yes.

Mr. GAGE. What?

The EXAMINER. Read the question.

(The last question read.)

Mr. GAGE. That is objected to for the reason given in the objection to the former question, and for the

W. M. Leitch Sheep Commission Company handled 267,391 head of sheep in 1931 and its two owners did all the selling and buying (Gov. Ex. 115, p. 68; Gov. Ex. 115B, p. 54). Mr. Charles F. Vieregg, a partner in this firm, testified:

> If twice as many sheep came to us, and they came in just the same way that they have come, that is the same proportions of different kinds, and classes, and types, and grades, and breeds, from the same sources, and so on, I do not know that it would be necessary to hire another salesman, but we would certainly have to rearrange our business. We would have to have some men at some end of the line. The chances are that Mr. Stover and I would sell them, but as it is we help sort them every day. * * * If we had twice as much, the chances are that we would do our selling just the same, but we would necessarily have to hire more men in the yards. The chances are that we would have to hire more people in the office, because that would take us away from our office if we had just twice as much under those conditions. [R. 454.]

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further reason that it fails to state the conditions under which they are to be handled.

Mr. BOHANNAN. Conditions just as they have been in the past year at Kansas City.

The EXAMINER. All right; objection overruled. Is the answer "yes", as stated above, or not?

A. Yes, but that would depend altogether on market conditions, climatic conditions, and various things that enter into livestock selling.

It is submitted that the witness' subsequent qualification did not detract from the weight of his direct answer.

The six cattle and calf salesmen of Swift & Henry Livestock Commission Company sold 138,133 cattle and calves in 1931. Mr. J. C. Swift, one of the owners of this firm, testified as follows (R. 1046):

> It is difficult to say what the peak carload maximum capacity of our firm is, but I would say without any hesitancy, that with a normal flow of business, Swift and Henry with their present organization, with practically no added expense, except such as would be incident to the account sales and few telegrams and things growing out of the increased business, could handle one-third more business, but as to any particular day, for one day we could handle more than that, particularly if we had a big run today and a slow market we would be jammed up.

If the volume of cattle and calves which that firm received in 1931 were increased by one-third and apportioned equally among the six salesmen, their average performance would have been more than 30,000 head per man.

It should be noted that the witnesses whose testimony has been described above expressed the opinion that a competent salesman, if he had enough volume to make it possible for him to operate in a reasonably efficient manner, could not merely equal the performance figures selected by the Secretary, but could exceed them. It is also significant that this testimony as to salesmanship

performance was not contradicted by any witness called by appellants.

Appellants have attacked this testimony as to the salesmanship performance which may be expected of a competent salesman if he receives a sufficient volume of livestock to enable him to operate in a reasonably efficient manner on the ground that it is opinion evidence. This description may be admitted without destroying the evidence or impugning its accuracy or force in any respect. It *is* opinion evidence, but it represents the opinions of men acquainted with the Kansas City market and well qualified to give expert testimony with respect to salesmanship performance. In view of the peculiar and abnormal conditions which exist in the Kansas City market, which will be described in detail below (*infra,* pp. 90–101), it would have been improper for the Secretary to accept without qualification and as the sole basis for determining reasonable costs evidence as to the average salesmanship performance of all salesmen on the market. In such circumstances, the testimony of these witnesses was more valuable than any evidence as to the average performance of all the salesmen on the market. It was certainly the best evidence available to prove what a salesman could do if normal and reasonable conditions prevailed in the market, and it is only on the basis of such conditions that reasonable rates can be prescribed.

Appellants' entire attack upon the Secretary's findings, and the evidence on which they rest, is based upon the unwarranted assumption that the Secretary was bound by the evidence as to the actual costs of salesmanship incurred by the market agencies operating in the Kansas City stockyards. For example, throughout their brief appellants assume that the mere fact that expenditures for salesmanship were made is alone sufficient proof of their reasonableness. Reduced to its essentials, their complaint seems to be that the Secretary should have ignored all the evidence before him except the evidence as to actual cost. These contentions and the assumptions upon which they rest disregard the evidence which was before the Secretary, and which, under the Act, he was obligated to take into account, which showed that abnormal conditions existed in the Kansas City market and that these conditions resulted in unreasonable and extravagant salesmanship costs.

The evidence showed that there were too many market agencies operating on the Kansas City market, either for the good of the agencies or the good of the producers.[29] Owners and representa-

[29] As has been pointed out above (pp. 20–26, *supra*), appellants' insistence that the Secretary exceeded his statutory authority because he attempted to limit the number of market agencies, is based on a misconstruction of the Secretary's order. The Secretary in his order (Par. 129, R. 90) recognized that the Packers and Stockyards Act gave him no authority to limit the number of market agencies. It is true

tives of the various commission firms testified that they were all involved in a constant struggle to increase their volume of business or at least to keep that volume from shrinking. Despite appellants' unfounded assertion that the firms employ extra men at peak seasons, the evidence discloses that the market agencies are not operating at a maximum capacity or maximum efficiency at any time.

Mr. J. C. Swift, president of Swift & Henry Livestock Commission Company, one of the larger firms operating at the Kansas City market, stated:

> The total volume of business at the central markets shows a constant decrease, and this naturally increases the competition for that business open to several markets. My firm struggles to maintain its volume and uses every legitimate effort to do so. Volume is our only salvation. The diminishing volume affects our gross returns materially. [R. 1035.]

A member of one of the leading sheep commission firms testified that his firm could handle twice its present volume of business without increasing its selling force (R. 454). Another wit-

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that the rates fixed by the Secretary may not preserve the existence, or the present selling organization of all of the existing market agencies, but as the District Court in *Tagg Bros. & Moorhead* v. *United States*, 29 F. (2d) 750, 755, stated:

> It was not incumbent upon the Secretary to fix the rates so high that all agencies in the business would make money, whether they did substantial business or not. The stock exchange itself did not attempt that.

ness testified that in 1930 he "had the organization to handle the 6,000 head of cattle which (he) did not get" (R. 672). Mr. J. C. Swift of Swift & Henry Livestock Commission Company testified that with a normal flow of business his firm could handle one-third more volume with practically no added expense (R. 1046). Mr. Frank Witherspoon of the Witherspoon Livestock Commission Company stated that if his firm had received the volume which it formerly received, it would have been able to reduce units costs (R. 921) and that an increased volume would have enabled the firm to increase salaries (R. 930).

Witnesses connected with the production end of the livestock industry were decidedly of the opinion that there were too many commission firms operating on the Kansas City market from the standpoint of benefit and efficient service to the producers.

Mr. J. H. Mercer, Livestock Commissioner for the State of Kansas, testified at the first hearing before the Secretary that:

> If there were a reduction in the number of firms and people who are engaged in the livestock commission business at Kansas City, it is my opinion that they could still handle the business and very much better than it is now being handled. I would say that at least 30 or 40 firms could handle the business. [R. 276.]

At the second hearing the witness reiterated his former views, saying:

> The livestock industry is in a much less favorable condition today to pay its marketing costs, or any costs for that matter, than it was two years ago. Prices are lower. This, coupled with all other correlated business on the farm, has produced a condition in the industry much worse than it was two years ago. [R. 811.]
>
> * * * * *
>
> It is easy for the livestock exchange merchant to say that his business is being conducted at a loss, but when he realizes that his patrons have become almost insolvent because of a decline in the value of their livestock, it is time for the commission merchant to face the fact that he must make concessions even though it be to his own disadvantage. These concessions would be reduction in cost, cooperation, working more closely together, consolidation of the business, elimination of unnecessary concerns [R. 811–812.]
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> * * * * *

Mr. J. W. Hudelson, a livestock producer and a director of the Kansas Livestock Association, who participated in the appraisal of owners' services made by appellants, testified on cross-examination:

> I read Mr. Mercer's testimony and agree with the most of it. I have always contended that there were too many in the business.

> It is a slight run today, but one-third of the people could do the work, with the exception of a few days in the fall of the year when there are heavy runs. I would say half could do the business that is done at the stockyards here. If there were half the men engaged in the commission business, I think we would have a more stable market, and we could have some control at least over the volume of cattle that would be shipped on the various dates. There should be competition between individual agencies for business because it spurs them on to greater effort and more efficient service. [R. 595.]

Mr. F. E. Mollin, secretary of the American National Livestock Association, an association of producers, testified:

> It is possible that there are too many speculators just the same as there are too many commission firms. I took occasion to look up the number of commission firms on this market and I note that they have been increasing since 1922 while the receipts have been decreasing, according to the yard company's report. [R. 247.]
>
> * * * * *
>
> The livestock industry today is in the dumps and cattle are losing money. We should pay only a fair and reasonable charge for service. It is pretty hard to say just what the immediate effect on the industry would be but it is the total effect of all the charges that go into it. If you say one little

> charge is not of any effect and there is another, the grand total makes a considerable difference. We think that the nature of your business here has been such that it has attracted more men than are needed to conduct the service and that makes it tough for all of you. I think the only practical way to regulate the number involved in the business is through establishing reasonable rates based on good service and efficiently operated firms. [R. 248–249.]

Certainly it is not necessary to have from 50 to 60 firms to handle the volume of business received at the Kansas City market. The Secretary found that 11 of the 61 firms on the market in 1931 handled over 50% of the business and 24 firms handled over 75% of the business. Furthermore, 17 firms handled less than 500 cars of livestock each during the year and 5 of those firms handled less than 100 cars each. (Par. 86, R. 68–71.)

The Secretary pointed out in his order (Par. 113, R. 82):

> Notwithstanding the unfavorable business conditions and lowered receipts in 1931, as compared with 1929, few of respondent firms operating in both of those years showed any substantial reduction of personnel in the former as compared with the latter. Also, few firms made any substantial reduction in salaries and wages sufficiently early in the year 1931 materially to affect their cost of doing business as shown

> in the audits covering that year. Such decreases as were made took place largely in the latter part of the year 1931 and in the year 1932. The general impression gained from the record is, however, that respondents, in the face of almost universal lower levels in the United States, are attempting to maintain their personnel and the salaries thereof at the levels obtaining in the more prosperous year, 1929.

This finding of the Secretary is fully supported by the record. Record 717, 729–730, 745, 749, 795, 881–882, 1077; see also schedule 2 of Gov. Ex. 14–1 to 14–86; and Gov. Ex. 114–1 to 114–107, pp. 1–107.

An examination of the selling organization of a few typical firms indicates that there is a wide variation in average volume of business handled by the salesmen of the different firms. Firm No. 12 employed four full time salesmen and one full time buyer to handle the equivalent of 2,450 cars of livestock (Gov. Ex. 115, p. 57; Gov. Ex. 115B, p. 13). Firm No. 15 carried three full time salesmen to handle the 702 cars of livestock (Gov. Ex. 115, p. 57; Gov. Ex. 115B, p. 21). Firm No. 16 had five full time salesmen handling 988 cars of livestock (Gov. Ex. 115, p. 57; Gov. Ex. 115B, p. 23). Firm No. 29 had three full time salesmen and one full time buyer handling 962 cars of livestock (Gov. Ex. 115, p. 57; Gov.

Ex. 115B, p. 39). Firm No. 35 had eight full time salesmen and one full time buyer handling 2,418 cars of livestock (Gov. Ex. 115, p. 57; Gov. Ex. 115B, pp. 46–47). Firm No. 46 had eight full time salesmen and four full time buyers handling 5,641 cars of livestock (Gov. Ex. 115, p. 57; Gov. Ex. 115B, pp. 56–57). Firm No. 54 had the equivalent of eight and a half full time salesmen and two full time buyers to handle 8,544 cars of livestock (Gov. Ex. 115, p. 57; Gov. Ex. 115B, pp. 69–70). Firm No. 59 had ten full time salesmen and the equivalent of 3¼ buyers handling 7,022 cars of livestock (Gov. Ex. 115, p. 57; Gov. Ex. 115B, pp. 76–77). Firm No. 77 had four full time salesmen handling 906 cars of livestock (Gov. Ex. 115, p. 57; Gov. Ex. 115B, p. 110).

These performance figures when contrasted with the uncontradicted testimony, above set out, as to the performance which an efficient salesman could reasonably be expected to attain, demonstrate better than any other kind of proof the obviously overmanned condition of the market and the impossibility under present conditions of attaining reasonable salesmanship performance with the result that as the situation now stands the shippers as a class have to bear the burden of wholly unreasonable salesmanship costs.

The foregoing analysis of selling organizations indicates that many firms are maintaining unneces-

sarily large selling organizations. At first glance it might appear that provident management would operate to cause each firm to keep down the number of its salesmen to the minimum. However, the conditions existing in the Kansas City market and the peculiar nature of the business of the market agencies operate in the opposite direction. The business is one of rendering personal service and requires a very small outlay of capital. Furthermore, a person with a following among shippers can expect a certain volume of business from that following at little or no cost. Therefore, if commission rates are maintained by agreement as they are here at a relatively high uniform rate it is on the one hand an incentive for such a person to go into the business as an independent market agency; and on the other hand, if he is an employed salesman, there is an incentive for his employer to retain him in his employment for fear of losing the business which he personally controls. As a result, so far as the rates will permit it, there is a constant tendency for more persons to be engaged in salesmanship than are reasonably needed to perform the work.

It is these conditions which the Secretary had in mind when he classified salesmanship costs as a kind of costs which conditions in the business tended to increase (see pp. 58–59, *supra*). Furthermore, these conditions tend to maintain unduly

large selling organizations. It is a fair inference from the record that a firm in many cases will retain a salesman who controls a small amount of business, merely in order to retain that volume of business and to preclude the possibility of his becoming a competitor as an independent agency, and even though the salesman is unnecessary to the selling organization (R. 112). Furthermore, as will be explained below (*infra*, pp. 112–115), market agencies in some cases hire additional salesmen who have a following in order to increase their volume of business, even though the salesman is not needed to handle the livestock received by the firm, including the additional volume of business which he brings with him. The inevitable result of these conditions is to burden the unit cost of salesmanship with salaries that have no relation to the reasonable costs of salesmanship or to the actual selling service rendered to the producer. Because of the excessive number of firms and salesmen, a computation made on the basis of aggregate, actual, or appraised salaries for all salesmen on the market, or even for selected groups of those salesmen, would not furnish the Secretary with any adequate test of the reasonable cost of salesmanship. Under the Packers and Stockyards Act the duty of the Secretary is to prescribe reasonable rates, and the proper performance of that duty requires him in this case to reject the actual costs of salesmanship

at the Kansas City market as the sole test of reasonable salesmanship costs.[30]

These abnormal conditions make it impossible for even a competent salesman to operate in the Kansas City market at a reasonable degree of efficiency. Consequently, it is not surprising that a great majority of the salesmen do not sell as many head of livestock as the witnesses testified a salesman should be able to sell if his services were utilized under conditions which made reasonable efficiency possible. That does not prove, as appellants seem to believe, that this testimony should be disregarded or that the performance figures selected by the Secretary on the basis of that testimony are unreasonable. The reasonableness of the Secretary's finding cannot be tested by comparison with the low salesmanship performances which are caused by the present overcrowded and abnormal conditions existing in the Kansas City market. Despite the fact that actual

[30] It is interesting to note that the commission firms in *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, made exactly the same contention which is being made by the appellants in this case. In presenting their case to the master appointed by the District Court, they argued that the Secretary's allowance would not cover the actual salesmanship costs as experienced by the various agencies during the test period. On the basis of this argument, the master stated as one of his reasons for holding the rates confiscatory that they would fail by $294,477.20 to produce salesmanship costs. (*Tagg* record, p. 112.) This finding by the master was reversed by the District Court, 29 F. (2d) 750, and that reversal was sustained by this Court, 280 U. S. 420.

performance cannot be accepted as a test of reasonableness, it should be noted that the record shows that in fact there are some salesmen at the Kansas City market who attain or approximate the performance figures selected by the Secretary even under the conditions above described which render efficient use of their time and efforts by each of the salesmen employed in an overcrowded market practically impossible.

For example, John Clay & Company in 1931 sold 117,345 head of cattle and calves (Gov. Ex. 115, pp. 65, 66). Taking the year as an entirety, $4\frac{5}{12}$ salesmen were required to sell this number of cattle and calves.[31] Dividing the volume by this number of salesmen, it appears that each salesman sold an average of 26,568 head, or 2,432 head under the performance figure taken by the Secretary.

A salesman for the Moffett Livestock Commission Company testified that on the preceding Monday his firm had 34 cars of cattle to sell and all but

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[31] Appellants assert that this firm required 4 full time salesmen and 2 extra salesmen to sell the cattle and calves (appellants' brief, p. 109). In support of this statement, appellants cite Government Exhibit 115B. That exhibit does not disclose what months the 2 part time men were employed but does show that one man was employed for a period of 7 months and the other for a period of 4 months. Furthermore, Government Exhibit 115B, page 69, indicates that one of the so-called full time salesmen, Mr. James Reid, was manager of John Clay & Co., of Kansas City and devoted only one-half of his time to selling and related services and the remainder to his other duties. On the basis of these facts it is clear that if the year is taken as a whole, the company employed only $4\frac{5}{12}$ salesmen.

10 head were sold on that day by the three cattle salesmen selling for the firm (R. 542). Assuming that each salesman handled one-third of the cattle, it appears that all three sold more than twice as many cattle as would be considered a reasonable day's performance under the Secretary's finding.[31a]

The Bowles Livestock Commission Company sold 49,973 head of cattle (excluding calves) in 1931 (Gov. Ex. 115, p. 65). Two salesmen disposed of these cattle.[32] Murphy, one of these two salesmen, spends approximately 20% of his time on other duties (Gov. Ex. 115 B, p. 13). It thus appears that the two cattle salesmen approximated the performance figure selected by the Secretary.

John Clay & Company, in 1931, sold 565,861 head of sheep (Gov. Ex. 115, p. 68). That firm employed two sheep salesmen (Gov. Ex. 115B, p. 69). Thus it appears that the average salesmanship performance for each of these salesmen was 282,930 sheep, or approximately 33,000 head in excess of the salesmanship performance of 250,000 head which the

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[31a] A salesman selling, throughout the year, an average of 5 carlots per market day or 20 carlots per market week would attain the performance figure selected by the Secretary for the purpose of determining reasonable salesmanship costs.

[32] Government Exhibit 115 B, page 13. It appeared that Hopkins, the cattle buyer, helped to sell some cattle (R. 315), but it also appeared that the two cattle salesmen helped in the buying of cattle (Gov. Ex. 115B, p. 13). A third salesman listed as a cattle salesman sold only calves.

Secretary used for the purpose of determining reasonable costs.[33] In addition, these same two salesmen bought 25,167 head of sheep.

Cassidy-Southwestern Commission Company employed one salesman, Mr. Oscar Moody, to sell and yard all of the 150,283 head of sheep handled by the firm in 1931 (Gov. Ex. 115, p. 68). Mr. Moody was paid $2,937.50 for his services in 1931 (Gov. Ex. 115 B, p. 123). Since he did both the selling and yarding of these sheep he is entitled to compensation for both services. The Secretary found that the reasonable cost for selling and yarding sheep is $.014 and $.008 per head respectively, or a total of $.022 per head. This figure applied against the volume of sheep handled by this firm is approximately $3,300 or nearly $400 in excess of the salary actually paid for the performance of these services by this firm. The

[33]Appellants attempt to disparage these figures by stating that the salesmen were assisted by a sheep yardman in selling during peak periods (appellants' brief, p. 137). On the page of the record which appellants cite (R. 459) the head sheep salesman for John Clay & Co., testified:

> We also have a yardman who has been with us a considerable time, who is getting to a point where he can sell some drive-ins and all of us more or less still do considerable yard work in helping each other get the sheep sorted and getting them to the scales.

There is no support for appellants' assertion that the yardman is forced to give substantial help to the selling during any peak period and it seems clear from the testimony that the assistance he gives in selling is not sufficiently substantial to change materially the salesmanship performance referred to above.

unit cost found reasonable by the Secretary for selling and yarding sheep cannot be said to be insufficient or unreasonable as applied to the sheep business of this firm.

The evidence shows that one of the two salesmen of Farmers' Union Livestock Commission Company in 1931 attained the salesmanship performance figure used by the Secretary. In 1931, the two salesmen sold 147,922 head of hogs (Gov. Ex. 115, p. 67; Gov. Ex. 115B, p. 134). One of the two salesmen is paid a salary of $8,800 a year; the other one a salary of $2,200 a year. It may be assumed that the higher priced salesman sold by far the greater number of hogs, and this assumption is fully supported by the testimony of the head salesman, Mr. H. W. Garrison, who testified (R. 442):

> My assistant salesman early in the morning is practically a head yardman. He weighs the stuff that he sells and does the sorting and does as much work as a yardman as he does as a salesman. The proportion of hogs sold by him will vary at different times of the year. I expect he will sell one-fourth of them when light hogs and stock pigs are running heavy. It would not be that much now. I sell the bulk of the hogs right now because they are coming good and heavy.

It appears that Mr. Garrison in 1931 sold more than the 85,000 head of hogs which the Secretary

found to be a reasonable salesmanship performance. Mr. Garrison testified that a few days previously he had handled 21 carloads of hogs and 300 or 400 truck hogs. He added that it was a bad market day and he had to work until three o'clock in the afternoon to get them sold. (R. 442–443.) The same witness testified that on his biggest day he had sold with the help of his assistant 58 loads out of 62 loads which he had to sell (R. 443). It appears that Mr. Garrison has sold as many hogs in one day as the Secretary found a salesman might be reasonably expected to handle in a week.

A similar inference may be drawn from the testimony with respect to the Harry Kennaley Commission Company. In 1931 that firm handled 159,184 head of hogs (Gov. Ex. 115, p. 67). The hogs were sold by Harry Kennaley and two assistants. Government Exhibit 115B, p. 62, shows that the two assistants were primarily yardmen and that Mr. Kennaley spent 40% of all of his time in selling hogs.[34] It seems clear that the bulk of the 159,184 head of hogs was sold by Mr. Kennaley and that in 1931 he equaled or approximated the performance figure of 85,000 head which was used by the Secretary in determining reasonable costs.[35]

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[34] J. M. Laster, one of the yardmen, spent 15% of his time selling hogs, and the other, Joseph Keaney, who was employed for two months at a salary of $750, spent 40% of his time selling hogs and 60% of his time in yarding.

[35] Appellants attempt to disparage this fact by pointing to certain affidavits which were filed subsequent to the entry of the Secretary's order, which disclose that this firm

The testimony with respect to the firm of Martin, Blomquist & Lee is also significant. This firm handled 150,806 head of hogs in 1931 with two salesmen, each salesman thus having an average salesmanship performance of 75,403 hogs (Gov. Ex. 115, p. 67; Gov. Ex. 115B, pp. 86–87). One of these salesmen was an owner and the other an employee. The employed salesman received a salary of $2,812. The owner received from the firm a return of $6,375. (Gov. Ex. 115B, pp. 86–87). In view of the relatively low salary of the employee, it may properly be assumed that the owner sold the greater number of the hogs and thus approximated or exceeded the Secretary's performance figures.

3. *There Is No Merit in Appellants' Contention That the Secretary Disregarded "Variable Factors" Affecting Salesmanship Performance*

Appellants contend that "the Secretary completely disregarded uncontradicted evidence of numerous uncontrollable and variable factors affecting salesmanship performance" (appellants' brief, p. 125). The so-called variable factors which appellants appear to have chiefly in mind are (a) sea-

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has gone out of business and by referring to Mr. Kennaley's testimony that he received so many hogs that he did not give a good many of them "the right kind of selling, feeding or handling." It may be pointed out, however, that inasmuch as the Kennaley Commission Co. received more hogs than any other commission agency at the market in 1931, Mr. Kennaley's difficulties did not impair his efficiency to such an extent as to cause his customers to be dissatisfied and to ship to other firms.

sonal variations in the arrival of livestock, and (b) variety in grade and types of livestock and in identity of ownership.

So far as variations in grade and type of livestock are concerned and in identity of ownership, there is no support in the record for appellants' assertion that the Secretary disregarded these variations, either in determining reasonable costs or in fixing rates. The Secretary's findings with respect to the manner of arrival of livestock at the market (paragraphs 23–29 of Secretary's Findings, R. 38–41) show that the Secretary was aware of, and took cognizance of, these variable factors. Furthermore, the structure of the tariff which the Secretary prescribed made adequate allowance for these variations by providing graduated charges according to number and weight of the animals in a consignment.

The Secretary also made adequate allowance for seasonal fluctuations in the arrival of livestock at the Kansas City market. It is significant that although appellants frequently refer to these so-called "peaks" in the arrival of livestock and complain of the Secretary's failure to make proper allowance for fluctuations, they did not introduce any evidence showing in concrete manner the extent to which these fluctuations affect salesmanship performance, nor have they made any suggestions in their brief with respect to any particular allowance which the Secretary should have made, but failed to make, with respect to these variations.

As a matter of fact, the evidence in the record indicates that the fluctuations in the arrival of livestock are much less serious than appellants suggest and do not affect salesmanship performance to nearly the extent that the appellants would have this Court believe.

The evidence shows that livestock which arrives by truck arrives more evenly throughout the year and the days of the week than does livestock which arrives by rail (Resp. Ex. 35, pp. 2–9, R. 1091). Inasmuch as the receipts of livestock by truck are increasing at the Kansas City market (Gov. Ex. 15, 115; Resp. Ex. 37, p. 2; R. 431), it appears that the seasonal variations in the arrival of livestock are tending to disappear. The following table (compiled from Gov. Exs. 16 and 116) shows that the monthly fluctuations at the market have been steadily decreasing since 1929.

Percentage of cattle and calves arriving at the Kansas City stockyards by months for the years 1929, 1930, 1931

Month	1929 percent of total	1930 percent of total	1931 percent of total
January	7.69	8.09	7.99
February	5.75	6.77	6.89
March	6.25	7.43	7.61
April	6.86	7.46	7.15
May	6.00	5.99	6.22
June	5.50	6.11	6.47
July	7.90	6.52	6.02
August	9.02	8.12	10.24
September	13.78	12.55	10.02
October	13.70	13.60	12.73
November	9.45	8.53	11.65
December	8.10	8.83	7.01
Total	100.00	100.00	100.00

It has been pointed out at p. 101 above that the cattle salesmen for John Clay & Company were achieving a standard of performance which approached the performance figures used by the Secretary (*supra,* p. 101). Comparing the monthly receipts for that firm with the monthly receipts for the whole market, it is apparent that the business of that firm is subject to seasonal variations to a somewhat greater extent than is the volume of livestock received by the market as a whole. The following table clearly illustrates this fact:

Monthly cattle and calf receipts for John Clay & Company as compared with total monthly cattle and calf receipts for the Kansas City market for 1931, stated in carload equivalents (Gov. Ex. 113 F)

Month	John Clay & Co., cattle and calf receipts	Total market cattle and calf receipts
January	212	4,647
February	184	4,270
March	246	4,453
April	283	4,152
May	327	4,174
June	337	4,086
July	227	3,972
August	369	6,456
September	351	6,160
October	549	7,553
November	500	6,770
December	252	4,720

If the cattle salesmen for John Clay & Company could approximate the Secretary's performance figure under these circumstances, it is not unreasonable to expect other good salesmen to do likewise.

Counsel for appellants in the extensive hearings before the Secretary were unable to develop any testimony indicating that the so-called peak seasons throw such a volume of livestock on the market that the salesmen are unable to handle it. Many of the statements in appellants' brief with respect to the effect of the peak seasons are not supported by the record. For example, they say (appellants' brief, p. 108–109):

> Moreover, seven of the twenty-six [market agencies], although, according to the hypothetical standard, already overmanned with regular salesmen, found it necessary to employ one and sometimes two extra salesmen in the peak season to dispose of the number of cattle consigned to them for sale.

To support this assertion they set out a table purporting to show the "number of extra employed salesmen" for seven leading commission companies and cite Government Exhibit 115 B as the basis for the table (appellants' brief, p. 109, footnote 4). This is a grotesque and flagrant distortion of the record, because Government Exhibit 115 B does not show that extra salesmen were employed at peak seasons. The exhibit mere shows the number of part time salesmen who were employed in 1931 by the various commission firms. The exhibit does not show when the salesmen were employed or the reason for their employment. This assertion of

appellants is entitled to no weight whatsoever.[36] The only possible way in which appellants could have established this assertion would have been to have had the owners or managers of the market agencies go on the witness stand in the hearings before the Secretary and testify as to their motives

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[36] The work papers which were the basis of Government Exhibit 115 B show the facts with respect to the employment of these salesmen. These work papers were introduced as evidence in the second hearing before the Secretary (R. 825), and were marked Government Exhibits 114–1 A to 107 A. Because these exhibits were not certified as part of the record before this Court, appellees do not feel justified, despite appellants' distortion of the facts, in referring to the facts contained in these exhibits.

Exhibits before this Court indicate, however, why the conclusion which appellants draw from Government Exhibit 115 B is unwarranted. For example, one of the two part time cattle and calf salesmen shown by Government Exhibit 115 B to have been employed by John Clay & Company was Gerald Haggert. The same Exhibit shows that in 1931 Mr. Haggert was a member of the firm of Haggert-Wilson Livestock Commission Company (Gov. Ex. 115 B, p. 86). *So far as the Exhibit shows Mr. Haggert may have been with his own firm throughout the peak season in 1931.* Similarly, Government Exhibit 115 B, page 15, shows that one of the part time cattle salesmen employed by the Crider Commission Company was Mr. Ira Kimmons. The same exhibit shows, on page 128 that Mr. Kimmons was in business for himself in 1931. In view of those facts, it is arguable that Kimmons was employed because he controlled a volume of business and not because help was needed during a peak season.

Government Exhibit 115 B (p. 73) shows that the firm of Wright & Baucus hired C. M. Davis in 1931. The same

in hiring these additional salesmen. The fact that they failed to do this is significant.

While there is not sufficient evidence to disclose the exact reason for some of the commission firms employing extra salesmen throughout the year, there are a number of factors which were doubtless contributory causes of this action. Of these factors the most important is the possibility of acquiring some additional business by hiring an extra salesman for a short period of time. This factor is not developed at length in the evidence, although Mr. B. C. Biggerstaff, the Secretary of the Livestock Exchange, testified:

> Rule 5–A [illegible]le 7 of the Rules of the Exchange grew up out of the commission firms employing men rather seasonally. It simply prohibits hiring a man and paying a contingent salary on the basis of the business he is able to bring in. He has got to pay him a salary. It is designed to protect the business of the individual firms from expenditures which simply involve the accumulation of a volume of business. Men from Oklahoma would come up here who had 7,000 or 8,000 cattle and they would

exhibit (p. 65) shows that in 1931 C. M. Davis was a member of the firm of Jefferson, Lowery & Davis. Here again it may be argued that Mr. Davis was employed not because help was needed in the peak season but to obtain the volume of business which he controlled as an ex-member of another market agency.

> hire themselves out to the commission firms for three or four months for a salary that was out of line with their worth. They could not sell anything. It just became so obnoxious that the Exchange stopped it. [R. 270.]

Obviously this rule does not prevent a market agency from hiring a part time man on a flat salary basis in order to obtain the business which he controls.

The lack of foundation for the conclusions which appellants have drawn from the fact that some firms employ part time salesmen is emphasized by an examination of some of the other firms that hired extra salesmen. Firm No. 6, with two full time cattle salesmen, employed a part time cattle salesman to aid in handling a total volume of 487 cars of cattle and calves in 1931 (Gov. Ex. 115, p. 57; Gov. Ex. 115 B, p. 6). Firm No. 63, having one full time sheep salesman, employed one part time salesman to aid in selling 251 cars of sheep (Gov. Ex. 115, p. 57; Gov. Ex. 115 B, p. 86). Firm No. 82, having one full time hog salesman, employed an extra hog salesman part time to aid in selling 428 cars of hogs (Gov. Ex. 115, p. 57; Gov. Ex. 115 B, p. 116). Firm No. 83, having one employee listed as a full time hog salesman and bookkeeper, employed a part time hog salesman to aid in selling 54 cars of hogs (Gov. Ex. 115, p. 57; Gov. Ex. 115 B,

p. 119). Firm No. 87, having one full time sheep salesman, employed a part time sheep salesman to aid in selling 402 cars of sheep (Gov. Ex. 115, p. 57; Gov. Ex. 115 B, p. 126).

Appellants attack the salesmanship performance figures selected by the Secretary by contending that in some cases firms which had enough owner salesmen to attain those figures nevertheless were forced to employ additional salesmen to handle that volume of business (appellants' brief, p. 114). The fallacy in appellants' reasoning lies in the fact that they do not show that the owner salesmen were unable to sell the volume received, nor do they show the reason that additional salesmen were employed. The mere fact that a firm hires a salesman is no indication that that salesman is needed to sell the volume of livestock which the firm receives. It is just as likely that a firm will hire an additional salesman because it is receiving an insufficient volume as it is that the salesman will be employed because the firm is receiving a greater volume than it can handle. The reason for this is that the livestock business is a personal service business and customers tend to follow a salesman.

If appellants had really thought that such figures were of value in proving the number of salesmen required to handle any particular volume, they could have made a much stronger showing than they actually did. Firm No. 6, having one full

time owner salesman, employed a salesman for twelve months and another salesman for seven months to assist in handling a total volume of 487 cars of cattle and calves (Gov. Ex. 115, p. 57; Gov. Ex. 115 B, p. 6). Firm No. 15, having one full time owner cattle salesman, employed an additional salesman for the full year to assist in selling a total volume of 417 cars of cattle and calves (Gov. Ex. 115, p. 57; Gov. Ex. 115 B, p. 21). Firm No. 71, having two owner cattle salesmen, employed three full time salesmen and one full time buyer to assist in handling 1,952 cars of cattle and calves (Gov. Ex. 115, p. 57; Gov. Ex. 115 B, pp. 97–98). The owner salesman for Firm No. 74 had to employ another full time salesman to assist in handling 277 cars of cattle and calves (Gov. Ex. 115, p. 57; Gov. Ex. 115 B, p. 104). Firm No. 76, having one owner salesman, employed two additional salesmen to aid in handling 303 cars (Gov. Ex. 115, p. 57; Gov. Ex. 115 B, p. 108). The one owner cattle salesman for Firm No. 79 employed an additional salesman to aid in selling 330 cars (Gov. Ex. 115, p. 57; Gov. Ex. 115 B, p. 114). If the experience of these firms is to be taken as indicative of reasonable salesmanship performance, it would appear that many a salesman could not be expected to sell more than one carlot of livestock a day. These instances fully demonstrate how flimsy are the conclusions which appellants' counsel seek to draw from the employment of additional salesmen.

4. *There Is No Merit in Appellants' Suggestion That the Secretary Should Determine Reasonable Salesmanship Costs on the Basis of the Price Obtained by Salesmen for the Livestock Which They Sell*

Appellants suggest that "price, not volume or speed, is the test of the salesman's ability and value" (appellants' brief, pp. 19–20, 134–135) and by commenting on the variations in the average price realized by the various market agencies' attempt to create the impression that these variations indicate variations in efficiency (appellants' brief, pp. 19–20, 57–58).

Appellants make no suggestions as to how salesmanship efficiency could be measured in price received. Indeed, it seems clear that as a practical matter no such test can be applied. A salesman who devotes all of his time to selling and who in a year's time sells only 50 or 75 or 100 carloads of cattle cannot be regarded as spending his time efficiently no matter what price he obtains for the livestock. The basic difficulty with appellants' argument on this point is that it assumes that a high volume performance by a salesman is necessarily accompanied by a low per head price realization. The record indicates otherwise. John Clay & Company and Swift & Henry Commission Company were the two firms having the highest average per salesman performance as to cattle and calves. They were among the highest in per head

realization for cattle. Appellants have quoted at length testimony of Mr. Olander (appellants' brief, pp. 24–27) apparently for the purpose of showing among other things that he cannot be expected to sell a large volume because of the careful attention he gives to each sale. In this connection it is significant that his firm, National Livestock Commission Company, ranks high among the market agencies in volume of livestock handled (appellants' brief, p. 18).

Actually, the average per head realization for any agency may depend upon any one of a great number of factors other than the ability of its salesmen. Since cattle are bought and sold on a weight basis, a firm the bulk of whose business consisted of light weight cattle would receive a much lower average price per head than another firm the bulk of whose business consisted of fat steers. Likewise, a firm which dealt mainly in stocker and feeder cattle would not receive as much per head as some other firm would receive for the same cattle when those cattle were subsequently returned to the market for sale. Also, methods of feeding cattle vary in different areas (R. 224, 262), and these variations affect their value. Price depends directly upon quality (R. 257, 331), which may depend upon origin (R. 307, 331, 512), care and feeding (R. 369), age (R. 538), and breed (R. 538). The number of variations of grade and quality is graphically illustrated by appellants' Exhibit No. 34.

While volume is certainly not the sole test of efficiency, the practical necessities of the business require that a salesman sell a certain volume efficiently before he can be called a good salesman. As a matter of fact, the handling of a number of loads of cattle each day was declared by one of appellants' own witnesses to increase the efficiency of a salesman. W. C. Bradshaw testified as follows:

> A salesman is at his most efficient point when he has enough cattle so that he knows the value and condition of the market. I should say that a salesman selling a number of loads of cattle each day would be better posted and in a better position to get the most for his customer, on the average, than the man who has one or perhaps two loads of cattle a day, and maybe one or two loads of cattle a week, but there is a point at which the efficiency of a salesman is very materially reduced when he has so many loads of cattle that he cannot give any of them the proper attention, proper care, and proper sales ability. I feel that our force was able to sell the 31 loads last Monday efficiently. [R. 542–543.]

5. In Determining Reasonable Salesmanship Costs the Secretary Followed the Principle Applied in Tagg Bros. & Moorhead v. *United States, 280 U. S. 420*

Appellants insist that the Secretary in determining reasonable salesmanship costs failed to follow the principle applied in *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420. They state that in

the *Tagg Bros.* case the Secretary used "typical experience in making his allowances" and that:

> An examination of the record of the *Tagg* case in this Court (No. 45, Oct. Term, 1929) shows that the avowed plan which the Secretary followed as stated in his findings in determining allowable costs was to adopt "a normal of the actual cost of the particular item to those firms whose financial condition exhibits ordinary efficient management of their business" (FF. 14, R. 32 of *Tagg* record). [Appellants' brief, p. 133.]

An examination of the record in the *Tagg Bros.* case and of the opinion of the District Court shows that these assertions of appellants are absolutely without foundation and that in that case the Secretary did not base his findings as to salesmanship performances on "typical" or "normal" salesmanship performances. In the Secretary's order in the *Tagg Bros.* case he said, immediately after discussing in a general way the use of *normal* costs as a means of determining reasonable costs (Par. 16, p. 32, *Tagg* record):

> *The foregoing applies particularly to costs other than salesmanship.* The cost of salesmanship per car is arrived at in the following manner: a number of the respondents who were questioned as to the number of cars of each species of livestock that an ordinarily efficient salesmen of a particular species could sell in a reasonably efficient manner in one year did not express an opinion. A shipper who is frequently on the

> market at Omaha testified that such a cattle salesman could so sell from 2,000 to 3,000 cars and such a hog salesman could so sell from 2,500 to 3,500 cars, provided each had opportunity for the full exercise of his ability. No witness expressed an opinion as to the number of cars of sheep an average salesman could handle efficiently in one year, but a sheep salesman stated that on a Monday during the hearing he sold ten cars and during that week twenty cars, though receipts were not then as large as they had been, and he could have sold more. [Italics supplied.]

The Secretary then proceeded in that case to determine by investigating the salaries of employed salesmen what salary he would associate with a reasonable performance, and stated (Par. 18, p. 34, *Tagg* record):

> Therefore, $5,000 per year as to cattle and sheep and $4,000 per year as to hogs is considered to be the fair market value of the services of a good salesman in those respective lines. Upon the foregoing basis it is considered that a reasonable cost per car for salesmanship is $5 for cattle, $3 for hogs and $5 for sheep.

The Secretary's order in the *Omaha* case does not go into as great detail in explaining the basis for his choice of performance figures as does his order in this case. It is clear nevertheless that the same method was followed in both cases. The Secretary associated a salary figure with a per-

formance figure, and in the *Omaha* case as in the instant case he selected the performance figure because it was reasonable and not because it conformed to the average performance of all the salesmen on the market or the average performance of the salesmen of any so-called "typical" firm or group of firms. The discussion of the Secretary's method in the opinion of the District Court in *Tagg Bros. & Moorhead* v. *United States,* 29 F. (2d) 750, which is quoted in the footnote below, shows that the method there used by the Secretary does not differ materially from the method which he employed in the instant case.[37]

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[37] The District Court in *Tagg Bros. & Moorhead* v. *United States*, 29 F. (2d) 750, 754–755, said:

> The plaintiffs say that the per car limit for selling is so low that it is not compensatory, that it is below actual cost, that it is confiscatory, and that it will cause many of them to do business at a loss, and so be driven out of business. There is no uncertainty about how the Secretary came to use the per car limit for selling as a cost item in service in arriving at the rates in his schedule. It was shown to the Secretary that some of the men who do this selling on the market sell a great many cattle, and some sell very few. Some are working for high wages, and some for much lower, and others again, as owners of the business, charge all there is left in the business, after paying expenses, to this selling job performed by themselves.
>
> The Secretary was not concerned with nor attempting to say just what a cattle salesman should be paid. It was his task to find a maximum per car for this work, beyond which anything charged would be unreasonable. To that end he considered how many cars a man could sell in a day, if he had the cars to sell, and also how many cars the men engaged actually do sell in the course of the business. From the whole the Secretary concluded that good cattle and sheep sales-

B. THE SECRETARY'S FINDINGS AS TO THE REASONABLE COSTS OF GETTING AND MAINTAINING BUSINESS ARE FULLY SUPPORTED BY THE EVIDENCE

To cover the non-salary costs of business getting and maintaining activities for the market agencies at the Kansas City market, the Secretary allowed 10% of the total of the costs and profits found to be reasonable. The salary costs incident to this item are included in salesmanship salaries, owners' compensation, etc. (Order, Par. 148, R. 104–110).

Appellants have attacked this allowance as unreasonable and arbitrary. They say that "As distinguished from the *Tagg Bros.* case in which the allowances were 'a normal of the *actual* cost of the particular item in their business,' the allowance is purely arbitrary, as any overhead allowance of a given percentage must be" (appellants' brief, p. 146). But appellants nevertheless have failed to point to any real difference between the treatment of business getting and maintaining in the *Tagg Bros. & Moorhead* case and in this case.[38]

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men were being paid salaries of $5,000, and hog salesmen $4,000, and that any good cattle and sheep salesman can readily sell 1,000 cars of cattle or sheep in a year, if he has that many to sell, any good hog salesman could easily sell 1,333 cars of hogs in a year. There was in fact uncontradicted proof that each could sell many more cars. If he sells more cars per year, as some salesmen do, the Secretary has done nothing to prevent more than $5,000 being paid to the salesman, either as a wage or as a charge against the business, if the salesman is the owner. * * *

[38] For the Omaha market the Secretary made the following finding as to business getting and maintenance expense (*Tagg* Record, p. 34):

A sharp point of controversy between the producers' representatives who testified at the hearing and the

Not only was the method similar at the two markets, but so were the facts. The average expenditures of all firms for business getting and maintaining at Kansas City amounted to approximately

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respondents revolved around certain forms of advertising, especially the practice of the respondents of sending to patrons free subscriptions to the market paper. No attempt is made to decide what business-getting methods the respondents should employ or what proportion of their expenditure for this purpose they should devote to any method. The question is approached with the view of determining what is a reasonable amount to expend for business getting.

An analysis of the expenditures for business getting of the various groups gives the following result:

Group	Lowest percentage of gross commissions spent for business getting	Highest percentage of gross commissions spent for business getting	Average percentage of gross commissions spent for business getting
	Percent	*Percent*	*Percent*
A	11.96	29.99	17.56
B	9.57	16.51	12.96
C	4.27	22.81	14.31
D	4.51	28.73	12.16
E	1.95	26.48	11.60
Average for all respondents			14.85

The expenditures from which the above percentages were calculated do not include solicitors' salaries, which have been accounted for elsewhere. Considering the amounts actually spent for business getting as shown above, the attitude of the producers of livestock toward the expenditures for this purpose, and in view of the fact that a very substantial part of the expenditure does not result in bringing new business to the market, but in shifting consignments from one commission man to another, and because of the fact that the stockyards company also undergoes expenditures for advertising, all of which whether made by commission men or stockyards companies must ultimately be borne by the producers of livestock, 10% of gross commissions received is a reasonable expenditure for business getting.

15% of gross commissions—substantially the same percentage as at Omaha. At Kansas City the expenditure for individual firms varied from 0.98% to 46.51%. (See Appendix B, *infra*, pp. 189–90.) The testimony disclosed that these expenditures were excessive. In the light of that situation it was necessary for the Secretary to make a thorough investigation of all such expenditures and to determine upon a reasonable allowance to be covered in costs for this item.

Appellants have not attempted to demonstrate that the business of any individual firm requires the expenditure of an amount in excess of the amount allowed by the Secretary for business getting and maintenance. In fact, they do not attempt to show that the exigencies of any particular agency require any expenditure for such purpose. They content themselves with pointing out that the aggregate actual non-salary business getting and maintaining expense for all firms was $136,538.09 greater than the amount which the Secretary's allowance would have produced for this item (appellants' brief, p. 140). No effort is made to explain why 11 firms actually spent less than the amount found reasonable by the Secretary for business getting and maintenance incident to cattle and calves, 13 firms spent less for business getting and maintenance incident to hogs, and 3 firms spent less for business getting and maintenance incident

to sheep.[39] Appellants make no contention that these firms are not conducting a successful and efficient commission business by keeping their business getting and maintaining expenses below the reasonable figure as found by the Secretary.

It is apparent from appellants' discussion of business getting and maintenance costs that they are again contending that the Secretary is bound to maintain the *status quo* and fix rates sufficiently high to cover all costs actually incurred. The Secretary, however, has never contended that the schedule of rates is sufficient to do this.

As pointed out (*infra*, pp. 136–138), competition between market agencies is for the most part competition between a relatively fixed number of agencies each seeking to acquire a larger share of a declining volume of livestock. Consequently, the commission firms feel that it is not only necessary to keep their names before the public but to solicit producers and offer additional inducements to shippers in order to secure the business of the shippers.

There are a number of different methods employed by the commission firms in endeavoring to keep their names before the public. Practically all of the firms keep lists of customers and pro-

[39] These figures are computed by comparing the per head allowance of 4.5 cents for cattle and calves, 1.8 cents for hogs, and 0.59 cents for sheep (R. 122) with the actual per head expenditure for each species in 1931 (R. 104–109).

spective customers to whom they send market letters periodically concerning general market conditions and containing reports of outstanding sales consummated by the issuing firm (R. 221, 313, 548). A certain amount of advertising is done in livestock journals and in local papers in the territory from which the firms are accustomed to receive livestock (R. 1089). Also the various salesmen handling livestock at the market carry on a considerable volume of correspondence with their customers (R. 733). While the rules of the Livestock Exchange prevent giving expensive gifts, the market agencies are allowed to distribute inexpensive advertising novelties such as pencils and memorandum books (R. 270).

But the bulk of the expense involved in business getting and maintaining is the result of solicitation work of one type or another. Practically all of the commission men admitted that they did some country soliciting and some of them made regular trips over territory reaching as far west as Arizona, New Mexico, Colorado, Utah, and even California (R. 238, 460–461). Likewise, these men attend conventions and meetings of livestock producers, etc., throughout many of these states (R. 238). Furthermore, when solicitation does not take the form of going out and asking for business, it takes the form of special services rendered by commission men for the purpose of inducing producers to market their livestock through a particular firm.

Appellants have directed the Court's attention to the value of some of these services such as the inspection and appraisal of livestock prior to shipment to market by salesmen from the various firms seeking to handle the business. Conceding that this service may be of some value to producers receiving it, that fact does not justify covering the expense into the rates charged all producers regardless of whether they desire or receive the service.

There are certain other services that are obviously useful to only a small portion of the shipping public. For instance, some of the larger producers in the southwestern territory make a practice of shipping their stock into the grazing region of Oklahoma and Kansas and holding it there before marketing it. Frequently all the arrangements for acquiring pasturage for the stock are made by one of the commission firms (R. 298–299). Other shippers send their stock to feed yards adjacent to the market and hold it there while waiting a favorable market. It is not unusual for the commission firms to arrange for the care of that stock without direct charge to the shipper (R. 295).

Except for services rendered in connection with financing producers, no special charge is made for any of these services.

The Secretary, in considering the item of business getting and maintaining, discussed in great detail in his order all the activities carried on by

the various firms (Pars. 89–104, R. 73–79). All of the expenses involved in maintaining these services and doing the soliciting were included by the Government accountants under the heading of business getting and maintaining except the salaries of salesmen and owners who performed these services (R. 375–376, Gov. Ex. 115, p. 24) . The expenses now under consideration are non-salary expenses, and the necessary salary expense is included in salesmen's salaries, owners' return, etc. (Par. 115, R. 83–84).

The actual non-salary business getting and maintaining expenses for all market agencies amounted in 1931 to 15.22% of their gross commissions, less commissions on "seconds" [40] (Gov. Ex. 115, p. 31). From an analysis of such actual expenses for the individual firms (see Appendix B, *infra,* p. 189), it is apparent that the various market agencies differ widely in their opinions as to the necessity for expenditures for this purpose. It is also obvious that the size of the firm does not determine the percentage of commissions to be spent for business getting and maintaining.

Of the six commission firms receiving gross commissions in excess of $85,000 for 1931, the percent

[40] "Seconds" are animals purchased at the stockyards by traders and placed with commission firms to be resold without moving them from the stockyards. The acquisition of this class of business does not require business getting effort. Therefore, commissions on this class of business have been eliminated from gross revenue for the purpose of this comparison.

of revenues spent for business getting and maintaining was as follows:

National Livestock Com. Co	12.99
John Clay & Co	17.17
Swift & Henry Com. Co	14.86
Martin, Blomquist & Lee Com. Co	23.16
Producers Com. Assn	24.50
Farmers Union Livestock Assn	9.23

A cross-section of the firms receiving gross commissions in excess of $20,000 and less than $85,000 shows a varying percentage of gross commissions spent for business getting and maintaining as follows:

Ragland Storts & Burrus Com. Co	22.32
Crider Bros. Com. Co	13.28
Haggarty, Wilson Com. Co	11.17
Bowles Livestock Com. Co	16.55
Harry Kennaley Com. Co	10.52
Robinson, Hoover Com. Co	6.10
Laird Bros. Com. Co	29.00
Moffett Com. Co	6.72
Witherspoon Livestock Com. Co	20.27
Poole, Dempsey, Rutherford Com. Co	8.34
Baucus & Co	11.28
Cassidy Southwestern Com. Co	12.37

Among the smaller firms, that is, those receiving gross commissions of less than $20,000, the amount spent for business getting and maintaining varied from 0.98% of the gross commissions for Greer & Company to 46.51% for Ira Kimmons Com. Company. Fourteen of these firms had an expenditure of less than 10%.[41]

The testimony of the commission men in no way tended to show that an allowance in excess of that made by the Secretary was necessary or desirable.

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[41] All the foregoing percentages have been computed in relation to gross revenue less commissions on seconds. The reason for this is stated in footnote 40, *supra*, page 128.

Mr. C. A. Stuart, a member of the firm of Stuart, Gillespie and Company, testified that on the basis of the analysis of expenditures as shown in the audit of his firm, he considered that 2.8% of his gross revenues from commissions would represent his out-of-pocket soliciting expenses for 1931 (R. 1056).

Mr. W. T. Angle, of the Producers Commission Association, testified as follows:

> In budgeting our expense for business-getting and maintaining we have given consideration to the approximate amount of money that we want to spend for market cards and other forms of printed contact with our trade and then we have given consideration to the amount of money that we expect to expend on travel, hotel, meals, automobiles, train costs and such as that. We have not endeavored to assess against business-getting and maintaining any definite part of these men's salaries (salesmen who go into the country) in setting up our budget. We do not plan for the cost of business-getting and maintaining to exceed $2.00 a car. In fact we are trying to hold it down around $1.50 on all species. I am speaking of those figures on the basis of the gross number of cars handled and the income straight across on all business and when I say that amount per car I mean on all our business with truck-ins reduced to a car basis. [R. 883–884.]

At pages 1, 2, and 3 of Government Exhibit 115 the total costs per car are shown to be $18.69 as to

cattle and calves, $16.13 as to hogs, and $20.56 per car as to sheep. $2.00 per car, which is the maximum amount which this witness testified that his firm planned to expend for advertising, irrespective of species, is 10.7% of the per car cost as to cattle and calves, 12.4% of the per car cost as to hogs, and 9.7% of the per car cost as to sheep. The witness stated that he was trying to hold down his advertising to $1.50 per car on all species. $1.50 per car related to the costs shown above for handling each of the respective species results in 8.03% as to cattle and calves, 9.30% as to hogs, and 7.30% as to sheep. These percentages of the cost of handling the various species of livestock represent the judgment of the manager of one of the large market agencies doing business on the market as to what is a proper amount of costs to be expended for business getting and maintaining, and they strongly support the Secretary's finding.

Appellants contend that it is improper to consider as business getting and maintaining expenses the expense of trips to the country (appellants' brief, page 144).

Although a substantial portion of the total expense listed under business getting and maintaining was attributable to country trips, which are not advertising in the usual sense, yet neither are country trips directly connected with the actual selling of livestock, which is the primary function of the

commission firms on the market. Undoubtedly the producers receiving advice and assistance from commission men on these country trips sometimes derive benefit therefrom, but the fact remains that practically every item of expense thus incurred by the commission men is incurred for the purpose of inducing a particular shipper to give his business to a particular firm.

To call such expense items "selling services" merely tends to cloud the issue. Such services may aid producers in marketing their livestock but it would also aid the producer if the commission firm would furnish free of charge the feed necessary to fatten the livestock. Absurd as this may sound, it only goes one step farther than securing pasture and looking after stock while it is being finally conditioned for market. For the commission firms to bear the expense of such service may result in a saving of time and expense to the individual producer who receives the benefit but that does not prove that the firms are justified in recouping the expense from other ratepayers who do not use or need these extra services.

These heavy expenditures to attract and keep business are not shown to produce efficient results. Thus Mr. J. W. Murphy of the Bowles Livestock Commission Company testified:

> One day we got a wire from a party asking me to meet him at a point in Kansas. He also wanted to make a loan of $150,000 on

> 2,500 head of steers. We got in touch with the people that could handle this loan and wired him we could make the loan arrangement and that I would meet him in Kansas. He came up there in his car and I met him. We drove for three days looking at different pastures. About 10 days or two weeks later I met him at Wichita and we drove another three or four days and then made arrangements for pasturing the cattle. *We were in hopes that we would get those cattle to sell when they came back this fall. That is what pasture arrangements are generally made for.* We do not charge them anything for that kind of service except that we naturally expect those cattle back on the Kansas City market. I spent a week or ten days working with this party and Mr. Bowles spent a week. Eventually we get a little less than one-third of those cattle. We have had probably eight or ten such deals as that. No charge is made for that work. The man who is seeking the pasture does not reimburse us for our expenses. [R. 317.] [Italics supplied.]

Another example is found in the testimony of Mr. Frank Witherspoon of the Witherspoon Livestock Commission Company:

> A short time ago Mr. Ross of Fort Worth, Texas, asked me to come to Fort Worth and when I arrived there he told me that he wanted Mr. Sanders, our fat steer salesman, and myself to handle the marketing of 1,700 cattle and Mr. Ross asked us to go to the

> Flint Hills country and look at these cattle several times. After we had spent considerable money servicing that particular string of cattle he decided to put them on a feeding contract in Illinois, so we were out that expense with no return. Just this last week I was called to go to Nebraska to place some cattle on a feeding contract for the E. B. Johnson and Sons estate and those cattle were placed in what I would call the Omaha territory. I feel that there will be practically no return. I could go on and give a good many concrete cases in all these lines that in my opinion were not so general in their requirements when the other case was heard. [R. 916–917.]

In each of the above instances the producer received a valuable service from the commission firm rendering the service. The commission firm bore the expense but it did so by including the expense of servicing the livestock which it *did not sell* for the producer in the expense of handling the livestock which it *did sell,* and which was shipped by other producers. The result is that some producers paid for service which they did not get. Certainly this service was not rendered from purely philanthropic motives and if the motive was expectation of future business from the producer benefited, that in itself indicates, first, that such service is no direct part of selling, and, second, that this is in reality an advertising expense.

The only way in which appellants can justify such expenses is to show that such expenditures increase the volume of business to such an extent that they do not increase the reasonable unit costs for handling other livestock. In that case there would be no reason for making an extra allowance in rates to cover such costs, as such costs would tend to pay for themselves in additional returns.

Mr. Bachmann, an accountant from the Department of Agriculture, stated:

> I believe that the effort and expense involved in going after business in the case of these collective agencies are justified only in the event that it may be proven that the result was to produce business which actually produced profits sufficient in aggregate amount to compensate for the expense of getting it. No expense is worth the making of it, if it does not produce at least its equivalent in income. [R. 861.]

In this opinion he was substantiated by the testimony of Mr. J. C. Swift of Swift & Henry Livestock Commission Company:

> The additional business should more than pay for the cost of advertising, if it is good business, particularly if you are going into a territory that is normally yours. [R. 524.]

But in spite of the fact that all principles of business management require that this expense be a self-liquidating expense, it is not. The record

discloses that the volume of business for the whole Kansas City market has been declining since 1929.[42] At the same time the individual commission firms have been increasing their efforts to get and maintain business. As stated by Mr. J. W. Murphy; of the Bowles Livestock Commission Company:

> The tougher the going gets, the harder a fellow will go after the business, and while our cash outlay for advertising may be more or less last year than it was the year before, we are giving more time to it both directly and indirectly and through personal correspondence. With less volume we might have a little more time to devote to that angle of the business, but regardless of that, if we are going to stay in, we have got to go after it. I have made more country trips this season. We have spent more time on it, under greater difficulties, than in past seasons. [R. 774.]

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[42] The following table shows the number of head of each species of livestock bought and sold by the Kansas City market agencies in 1929 and 1931:

Species	Number of head, 1929	Number of head, 1931
Cattle and calves	2,844,815	2,489,772
Hogs	2,487,591	1,289,623
Sheep	1,953,438	2,028,026

(The figures in this table are compiled from Gov. Ex. 15, pp. 84, 98, 104; and Gov. Ex. 115, p. 57, and include the volume handled by the two cooperative firms.)

The result is that year after year practically the same number of firms are spending more money to get and maintain what they consider their share of a total market volume that is decreasing instead of increasing. Consequently, the total unit cost for business getting and maintaining is increasing regardless of the success or lack of success which certain individual firms may have in increasing their volume. This all follows from the fact that a great deal of the service rendered has no influence on the shipper in determining to which livestock market he will ship his stock.

In the last analysis it is not the special inducements offered by the commission firms but market price and market service that determine which firm will get the business (R. 456, 604).

Mr. John Haren, a salesman for John Clay & Company, testified:

> The chief factors that influence a shipper to ship to Kansas City rather than to some of the other markets is the condition of the market and his information as to where he can get the best price for his livestock. [R. 470.]

Mr. Frank Standish of Drumm Standish Commission Company stated:

> The first thing that induces a shipper to ship to any particular market or commission firm is that he naturally feels like he is going to get as much or more out of his shipment by going to this particular firm

> than at any other place. The second reason is that he knows this person or this firm and likes them because they know how to handle the business, and he knows them to be upright and on the square. A neighbor who has shipped cattle is well satisfied and he may recommend a firm. Perhaps more than most any other business it is largely a personal proposition. [R. 607.]

From the foregoing discussion it is apparent that the item of business getting and maintaining is a competitive item of expense developed between the commission firms in their efforts to increase their individual shares of a fairly fixed volume of business (R. 613–614). These firms have all been operating under a uniform schedule of rates. Each one holds its services out as being of the highest quality. If such claims be justified, it can make but very little difference to shippers which market agency they utilize. Consequently, the intense competition between firms can only manifest itself in the form of offering special inducements to shippers to persuade them to select a particular firm. It is immaterial whether we speak of these inducements as "selling service" or "bonuses," the fact remains that they are not directly necessary in performing the function of selling livestock, and that they are the direct result of excessive competition.

Mr. C. A. Stuart, a member of one of the commission firms, in discussing appraisal work, said:

> If some firms are more active along this line it makes it necessary for other firms to become more active, to an extent. Within recent years and within recent months my firm has been reaching out more extensively for business. It has gone into new territory. This is not peculiar to any particular locality. [R. 1058.]

Mr. Bryant Poole, of the firm of Poole-Dempsey-Rutherford Commission Company, testified:

> If our firm should curtail the amount of this appraisal work and the other firms continue to do it, it would cripple us a lot, because the firms would go out and appraise for them and they would ship to the other firms. It is necessary for us to do it as long as anybody does it. [R. 1084.]

Mr. F. E. Mollin, of the American National Livestock Association, testified:

> There is a great deal of money that is now spent in the solicitation of business that is not for the purpose of attracting new business to the market, but simply one firm trying to get it away from another firm. That does not do the livestock industry any good. If there is no limit on the amount that can be spent in that way, except the money that they can make through commission, there is the constant urge to have higher commission charges. *As I have observed it, the only result of higher commission charges has been more firms in business.* Conversely, it seems to me that if you have a

> less return from commission there has got to be some restriction of the amount that they can spend in advertising and business solicitation. The natural result of that, unfortunate as it seems, locally, will be that some firms would have to retire from business. [R. 251.] [Italics supplied.]

The competitive nature of this item results in a great amount of duplication of service. It is not unusual for several different firms to appraise the same livestock for a single shipper (R. 252, 470, 878, 932, 1058). Obviously there must be a large duplication in the sending out of market letters because nearly all firms follow this practice. One firm sent out eleven hundred letters each week and had sent out as many as three thousand in a week (R. 313). The whole market territory is covered by solicitors for the stockyards company (R. 263) as well as the solicitors from the commission firms. The Bureau of Agricultural Economics in the Department of Agriculture maintains a daily radio broadcasting schedule of market reports at Kansas City in addition to the Exchange broadcast (R. 282–283). The dissemination of the same information by the market agencies is an unnecessary duplication of service, is of no value to the livestock industry, and results in a great deal of waste which eventually must be paid for by the shippers.

Mr. Bachmann testified:

> To the extent that business getting and maintaining efforts of market agencies at

> the Kansas City stockyards merely tends to divert the volume from one firm to another, those expenditures increase the cost of marketing. [R. 878.]

Furthermore, the shippers are feeling the weight of this expense as it is reflected in the rates charged by commission men. Mr. F. E. Mollin further testified:

> The livestock industry today is in the dumps and cattle are losing money. We should pay only a fair and reasonable charge for service. It is pretty hard to say just what the immediate effect on the industry would be but it is the total effect of all the charges that go into it. If you say one little charge is not of any effect and there is another, the grand total makes a considerable difference. We think that the nature of your business here has been such that it has attracted more men than are needed to conduct the service and that makes it tough for all of you. I think the only practical way to regulate the number involved in the business is through establishing reasonable rates based on good service and efficiently operated firms. [R. 248–249.]

The foregoing testimony is a sufficient answer to appellants' contention (appellants' brief, pp. 21–23, 144) that they are spending large amounts on country trips primarily for the benefit of producers. This contention is not new in market agency rate cases. It has been made in other suits brought

to enjoin such rate orders of the Secretary and it has been rejected by district courts. Thus, in *American Commission Co.* v. *United States,* 11 F. Supp. 965, the District Court of Colorado said (p. 972):

> Several stockmen testified that they did not desire assistance in the sorting and grading of their cattle, and that they favored the complete elimination of any allowance for "Business Getting and Maintaining." At least one livestock organization has passed resolutions requesting that this country solicitation cease, and the resulting savings be used to reduce rates.
>
> In the final analysis the various expenditures considered under this head are incurred mostly to persuade a shipper to send his livestock to one firm rather than another, which presumably can serve him equally well, and not in the development of new territory; so it is hard to see what real benefit it all is to producers and shippers. There is substantial evidence on this record to support the Secretary's finding that 10 per cent. is a reasonable allowance for this item in computing his schedule.

The market agencies, like other businesses, are entitled to make reasonable expenditures for advertising, but producers should not be forced to pay more than a reasonable amount for having themselves solicited. The service rendered may be valuable to some producers but it does not follow that every producer should pay for that serv-

ice regardless of whether he uses or desires to use the service. Furthermore, these services are chiefly performed in connection with rail shipments of cattle and are not often furnished to small producers (R. 833). But if all this expense is covered into rates, it means that all producers are forced to bear the burden of the expense.

The Secretary has recognized that some expense along this line is necessary in order to operate an active business of this nature. It is necessary for a commission firm to keep its name before the public and keep in contact with conditions in the field to a certain extent. The Secretary's analysis and finding are stated in paragraph 148 of his order (R. 109–110):

> An amount reasonably necessary for business maintenance is an item properly coverable into a schedule of reasonable rates. Any expenditure above this amount directed toward increasing the volume of business should be recouped from the additional business obtained. Competition in the commission business is extremely keen and results in a race for getting business which does not manifest itself in a reduction of rates but consists largely in efforts by each market agency to take some of the business away from the other market agencies. Since the rates of most of the respondents are uniform, there is little inducement for the shipper to select one market agency in pref-

erence to another because of the rates charged. Business is attached in many cases by reason of ties of personal friendship; in other cases by the estimate of the character of services rendered. Each market agency holds its services out to be of the highest quality and endeavors to convince the shipper of this fact. Under these conditions the amount expended for business getting and maintaining is limited only by what can be afforded under the existing rates, whatever they may be, and by such limits as the respondents impose upon themselves. If excessive expenditures on this account be covered into a rate schedule, every shipper pays to have himself persuaded to send his livestock to one commission firm rather than to another which presumably can serve him equally well. Moreover, as already pointed out, some of the expenditures incurred to get and hold business are covered in general expenditures and in the salaries of salesmen employed, in part at least, on account of the business which they control as well as on account of the salesmanship which they perform. On the basis of all the facts in the record it is found that the reasonable amount to be covered into rates and paid by the shipper on account of business getting and maintaining should not exceed 10 percent of the total reasonable cost and reasonable profit.

Although many firms were spending more for business getting and maintaining than the Secre-

tary actually included in rates for this item, the following table indicates that some firms were not spending as much for this item as was allowed by the Secretary (Gov. Ex. 115, pp. 24, 57):

Firm number	Actual expenditures for business getting and maintaining	Total allowance under Secretary's order for all species	Firm number	Actual expenditures for business getting and maintaining	Total allowance under Secretary's order for all species
1	$502.00	$255.32	52	$1,998.90	$1,113.07
4	4,772.57	1,792.46	53	4,805.07	1,627.18
5	4,060.13	1,234.33	54	26,237.17	12,314.31
6	1,344.83	867.07	55	4,517.32	3,153.91
7	1,948.84	1,457.81	56 [1]	1,409.01	1,709.10
9 [1]	245.56	486.53	59	18,037.98	9,900.77
11 [1]		139.36	60	1,460.13	1,249.62
12	7,183.35	3,584.29	61 [1]	579.79	662.96
13	6,094.41	3,645.77	62	6,641.65	1,721.92
14	4,182.98	2,438.42	63	23,667.58	8,770.12
15 [1]	577.47	1,070.35	65 [1]	1,639.74	1,963.66
16	1,607.82	1,362.50	66 [1]	45.00	179.46
17	715.00	638.28	67 [1]	61.37	132.12
18	4,041.75	2,888.20	70	4,886.72	2,013.61
19	1,403.48	653.99	71	5,388.71	3,165.86
20	2,632.16	1,526.63	72 [1]	69.48	127.52
23	2,153.82	1,605.13	73	9,995.11	4,199.00
25	4,556.60	2,766.35	74	746.31	438.26
26	2,590.31	1,748.69	75	1,826.78	1,237.17
29	1,418.49	1,382.62	76 [1]	77.71	597.33
30	1,466.80	1,120.56	77	1,779.35	1,247.72
33	137.78	101.72	78	850.00	592.39
34	4,100.12	2,644.87	79	720.48	578.05
35	9,166.57	3,250.73	82	10,298.78	5,524.47
37 [1]	53.62	98.01	83	8,429.48	5,582.26
42	8,184.78	3,251.71	84	6,416.29	4,144.06
43	4,543.31	828.84	87	976.65	623.93
44	5,554.83	1,577.61	88	852.00	134.84
46	11,388.03	7,732.96	10	24,809.83	7,677.45
48	2,252.16	2,015.83	36	9,149.26	6,750.69
51	5,503.18	3,918.55			

[1] Firms which spent less for business getting and maintaining in 1931 than the amount found reasonable by the Secretary.

Appellants throughout their discussion of the Secretary's finding that 10% was a reasonable allowance for business getting and maintenance have

attempted to leave the impression that there was something arbitrary or unreasonable in the selection of that figure. It is quite apparent that it would be impossible to find any lump sum which every agency might be said to be reasonably required to spend for this item. The variation in the size of the market agencies and their volume of receipts precludes any such method. Likewise, this is the type of expenditure which should be so closely related to the volume of business handled that a scientific method of budgeting expenditures would require that this expense be fixed as a percentage of either revenue or costs. Since the market agencies themselves do not appear to have worked out any such method of budgeting their business getting and maintenance expense, it was necessary for the Secretary to determine a proper relation between this item and the other cost items. The fact that he exercised his judgment in the light of the evidence and found that the reasonable relation of business getting and maintenance costs to other costs and profits should be 10% does not prove that that determination was arbitrary. In *American Commission Co.* v. *United States,* 11 F. Supp. 965, the court stated (p. 971):

> An allowance for this item, like an allowance for going concern value, is peculiarly a matter for the informed judgment of the trier of the facts. Both rest largely upon intangible elements which can not accurately be measured.

It was apparent from the evidence that the allowance was more than sufficient to cover the actual costs of a number of the market agencies. The mere fact that the Secretary did not select a figure below or above 10% does not invalidate the selection of 10%.

It should be noted in this connection that the 10% allowance is not the only allowance for business getting and maintaining expenses. No salaries were included in this item but the Secretary, in making the salary allowances, contemplated that those allowances would cover work done in business getting and maintaining (Par. 115, R. 83–84).

Furthermore, the rates were finally fixed at a level which provided a cushion of $150,212.91 over reasonable costs. Since no attempt has been made to limit the expenditures for business getting and maintaining, this amount, as well as any amounts resulting from economies in other expense items, is available for solicitation work. Also, the commission firms may make unlimited expenditures for business getting and maintaining if those expenditures are self-liquidating.

Appellants have pointed out in their brief (appellants' brief, p. 142) that the actual expenditure for business getting and maintaining may be divided up into 45% for country trips, 8% for exchange dues and assessments, and that the remaining 47% is mostly chargeable to market letters. The burden of appellants' complaint seems to be

that the Secretary did not set out in detail which class of expenses he expected appellants to reduce or eliminate. Obviously the Secretary should not determine such details of individual management. From the foregoing discussion, *supra,* pages 128–129, it is apparent that the appellants themselves follow no uniform practice in getting and maintaining business, nor do they show any degree of uniformity in the amounts which they expend for this purpose. Unless appellants can demonstrate, in the face of the uncontroverted evidence that some of the firms are spending less than the amount allowed, that it is necessary to spend a greater percentage than that found reasonable by the Secretary, it would seem apparent that all could get along satisfactorily on the Secretary's allowance. The details of accomplishing this must necessarily be left to the judgment of the owner of each market agency and the exigencies of each business.

Undoubtedly it is true that the allowance is not sufficient to protect all appellants against all of the hazards of competition. But the law does not require that rates cover more expense than that for which the Secretary has allowed.

The Secretary has clearly recognized that "within the limits of reason, advertising or development expenses to foster normal growth are legitimate charges upon income for rate purposes as for

others" *West Ohio Gas Co.* v. *Public Utilities Commission of Ohio,* 294 U. S. 63, 72. Appellants are entitled to have covered into rates a reasonable amount to spend in calling attention to the quality of their services to patrons. If they spend more than a reasonable amount in their efforts to attract new business, the expense incident to obtaining this new business should be financed out of the commissions derived from it. If petitioners spend more than a reasonable amount for business getting and maintaining and fail to get additional volume, the shipper should not be forced to subsidize this non-self-liquidating expenditure.

The allowance made by the Secretary is in line with similar allowances made at other markets and approved by the courts. In *Tagg Bros. & Moorhead* v. *United States,* 29 F. (2d) 750, 280 U. S. 420, the District Court found that an allowance of 10% of gross revenue was reasonable, and that finding was sustained by this Court.

In *Acker* v. *United States,* 12 F. Supp. 776, the District Court sustained an allowance of 9% of reasonable costs and profits for business getting and maintaining and in *American Commission Co.* v. *United States,* 11 F. Supp. 965, an allowance of 10% of reasonable costs and profits was found to be reasonable.

It is submitted that the Secretary's findings with respect to the reasonable amount to be

covered into rates for business getting and maintaining expenses are reasonable, lawful, and supported by substantial evidence.

C. THE EVIDENCE FULLY SUPPORTS THE SECRETARY'S FINDINGS AS TO THE COSTS WHICH THE CONDITIONS OF THE BUSINESS TEND TO KEEP DOWN

The findings of the Secretary with respect to reasonable costs, other than those which have been considered above, relate to those costs which the conditions of the business tend to keep down.[43] Of these findings the only ones to which appellants object in their brief are the findings with respect to yarding and office salary costs.

1. *The Secretary's Allowances for Yarding and Office Salary Costs are Fully Supported by the Evidence*

Appellants' objection to these findings of the Secretary is not directed primarily at the amounts which he found to be reasonable unit costs for yarding and office salaries. Appellants do not expressly contend either that those amounts in themselves are unreasonable or that they fail to cover the costs actually incurred by a great many of the market agencies in the Kansas City market. The record makes such contentions impossible.

The following table compares the Secretary's findings as to the reasonable unit costs of yarding

[43] These costs are: yarding salaries, yarding expenses, office salaries, office expenses, administrative and general expenses, insurance, and interest (R. 122).

salaries with the weighted average unit costs actually incurred by appellants for those functions:

	Reasonable Unit Costs (R. 122)	Weighted Average Of Unit Costs Actually Incurred (Gov. Ex. 115, 115B)
Cattle and calves	$0.0750 per head	$0.0704 per head.
Sheep	$0.0080 per head	$0.0057 per head.
Hogs	$0.0300 per head	$0.0369 per head.

The actual unit cost of yarding salaries in 1931 to 56 market agencies operating in the Kansas City market are shown in paragraph 44 of the Secretary's findings (R. 98). Thirty-five of the 56 firms had lower actual per head costs for cattle and calves than the allowance fixed by the Secretary. Twenty-five out of 51 market agencies had unit costs for yarding salaries with respect to hogs which were lower than the allowance fixed by the Secretary, and the unit cost incurred by one firm was the same as that allowed by the Secretary. As to sheep, 6 out of 12 firms had lower costs than the allowance made by the Secretary.

If the allowances made by the Secretary for reasonable unit costs for yarding salaries are applied against the aggregate volume of livestock of all species handled by the market agencies in 1931, it appears that these allowances would have produced a revenue more than $11,000 in excess of appellants' aggregate out-of-pocket expenses for yarding salaries. (See table on page 163, *infra*.)

The following table compares the Secretary's findings as to the reasonable unit costs of office salaries with the weighted average unit costs actually incurred by appellants for those functions:

	Reasonable Unit Costs (R. 102)	Weighted Average Of Unit Costs Actually Incurred (Gov. Ex. 115, 115B)
Cattle and calves	$0.0525 per head	$0.0480 per head.
Sheep	$0.0100 per head	$0.0081 per head.
Hogs	$0.0300 per head	$0.0278 per head.

The actual per head cost of the market agencies for office salaries is shown in paragraph 146 of the Secretary's order (R. 100–102). Twenty-five out of 57 firms had a lower per head cost for cattle and calves than the amount found reasonable by the Secretary; 27 out of 57 had a lower actual cost for hogs, and 12 out of 60 had a lower actual cost for sheep.

When the Secretary's reasonable unit costs for office salaries are applied against the aggregate volume of livestock of all species handled by the market agencies in 1931, it appears that the reasonable costs would have produced a revenue exceeding by more than $17,000 appellants' actual out-of-pocket expenses for office salaries.

Appellants do not attempt, in the face of this evidence, to contend that the Secretary's findings as to the reasonable unit costs of yarding salaries and office salaries are unreasonably low. Their ob-

jection, which is leveled primarily at the Secretary's findings as to actual unit costs incurred by appellants, is this: The functional unit costs found by the Secretary to have been actually incurred for yarding and office salaries and set forth in his findings "are wholly at variance with the costs as ascertained and reported by the Government's accountants" (appellants' brief, p. 149). Appellants do not assert that this circumstance caused the Secretary's findings of reasonable costs to be lower than they otherwise would have been nor are they otherwise explicit as to the exact way in which this alleged variance has prejudiced them.

The asserted variance does not affect in any way the validity of the Secretary's findings as to reasonable costs. The issue as to those findings is whether there is evidence to support them, and appellants' preference for one accounting method rather than another has no pertinence to that issue.

There is no basis whatsoever for appellants' assertion (appellants' brief, p. 157):

> The ultimate findings of the Secretary as to reasonable costs for yarding and office salaries are not supported by any evidence other than the Secretary's evidentiary findings. It has been shown that the evidentiary findings are themselves no more than arbitrary and unsupported figures, completely without probative value.

If the Secretary had made no findings as to the actual unit costs incurred by market agencies for yarding and office salaries, the uncontroverted fact that the reasonable costs found by the Secretary as applied to the volume of livestock handled in 1931 would have produced an amount in excess of appellants' actual out-of-pocket expenses for yarding and office salaries, standing alone, would have been more than sufficient to support the Secretary's findings as to reasonable costs.

But quite apart from this consideration, the Secretary's findings as to actual costs are not "arbitrary and unsupported figures." On the contrary, they are based on exhibits and facts which are in the record, including the costs analyses made by the Government accountants. The difference between the cost figures found by the Secretary and the results reached by the Government's accountants is capable of an easy and perfectly comprehensible explanation. The difference is the result of the following situation: In connection with their analysis of actual costs, the Government accountants had each market agency fill out a questionnaire which showed, among other things, the number of employees, their principal duties, their compensation, and the amount of time which each spent on different functions (Record 846, 807, 872; Gov. Ex. 115B). On the basis of the information contained in these questionnaires the accountants, in making their analysis of costs, attempted to divide the time

of each employee and to charge an estimated portion of his time to each function (R. 855). For example, if the questionnaire indicated that a certain salesman devoted one-fourth of his time to yarding, the accountants, in determining the total cost of yarding salaries, included in that total one-fourth of the salesman's salary."

When the Secretary prepared to determine the actual unit costs incurred by the market agencies he did not adopt the accountants' method of dividing the time of employees among several functions, but instead charged all of each employee's salary to the single function to which most of the employee's time had been devoted. For example, in the hypothetical instance mentioned above, the Secretary corrected the accountants' cost analysis by restoring to the function of salesmanship the one-fourth of the salesman's salary which had been charged to yarding by the accountants and deducted an equal amount from the total of the yarding salaries.[15] In each of the instances which appellants have set forth in pages 150–152 of their brief, such adjustments explain the difference between the costs set forth in the order and the costs set up in the cost analysis prepared by the Gov-

[14] The information from which this analysis was made of the costs of each firm is contained in Government Exhibit 115 B.

[15] Government Exhibit 115B contains the information which the Secretary used in making these corrections of the results reached by the Government accountants.

ernment accountants. Appendix C to this brief (pp. 191–192, *infra*) shows the amount of the adjustments in the case of 15 of the firms which are listed in the table in appellants' brief and indicates the reason for making each such adjustment. A similar explanation could be made for each of the instances listed in that table. An examination of Appendix C shows that there is nothing mysterious or "unexplained," or "arbitrary" or "capricious" about the Secretary's method of determining the costs which he set forth in his order.

The Secretary clearly explained in paragraph 115 of his order why he used this method of determining costs rather than the method employed by the accountants. He said [46] (R. 83–84):

> * * * in many instances the major functions of those engaged in performing the activities of respondents can be carried on

[46] Appellants for some inexplicable reason appear to believe that this explanation is in conflict with a statement in appellees' answer in the court below which appellants have isolated from its context and set forth on page 149 of their brief. An examination of the paragraph of appellees' answer from which the statement is taken (R. 142) shows that it was directed to an allegation made by appellants in their petitions to the effect that the separation of costs into functional costs such as selling, yarding, office work, etc. was arbitrary and not based on any natural segregation incident to the actual performance of these functions; and that the statement has nothing to do with the question of whether in determining costs an attempt should be made to divide the time of a man among the various functions which he performs.

only at certain times. For instance, a salesman cannot sell livestock except when the market is open and more or less active, notwithstanding the volume of livestock which he has for sale. On the other hand, the type of men who make good salesmen would hardly be content to accept less salaries in consideration of short hours. They demand and get good pay and are willing to return therefor a reasonable day's and week's service. Therefore, the fact that, prior to the selling hours they assist in the yards and that, during the last one or two days of the week they go to the country to appraise livestock and solicit business do not increase the respondents' expenses for salaries. Therefore, in the distribution of costs hereinafter made to functional accounts, the services of a salesman, for instance, are not divided as between selling, yarding, office work and business getting and maintaining, but are considered as being covered by the reasonable allowance for salesmanship. The same is true in principle with respect to the salaries of other workers such as yardmen and those who are engaged in the office.

Appellants' attack is merely a criticism of the accounting method used by the Secretary and that criticism rests on nothing more substantial than that the Government accountants used a different method. The Secretary is obviously not bound to employ a certain accounting method

merely because that method was used by Government accountants in making a cost analysis. The merits of the two accounting methods are not material, but if they were, appellants would have to find a more substantial basis for their attack than the fact that the method used by the Secretary was not also used by his accountants.

In this connection it is interesting to note that appellants' enthusiasm for the accounting method employed by the Government accountants disappears entirely when appellants consider the matter of salesmanship performance. In their computations as to the average performance of the salesmen of different market agencies, appellants do not attempt to divide the salesmen's time among the different functions which they perform and thus make allowance for the time which they spend doing other things besides selling and buying livestock. Had they done so they would have obtained much higher performance figures than the ones they refer to in their brief.

Appellees submit that the difference between the actual costs set forth in the Secretary's order and the cost figures found in the cost analysis made by the Government accountants does not affect in any way the merits of the evidence upon which the Secretary's findings rest or the validity of the findings themselves.

2. *The Evidence Supports the Findings Made by the Secretary with Respect to the Other Costs Which the Conditions of the Business Tend to Keep Down*

Appellants in their brief do not attack the findings made by the Secretary as to the reasonable costs of the remaining functions to which costs were allocated. Consequently, appellees will not deal with these findings in detail but will briefly indicate in a general way the evidence upon which the findings rest.

Yarding expenses—By comparison with the actual per head cost for yarding expenses (Par. 145, R. 99–100) it will be seen that 37 out of 49 firms had a lower actual cost on account of yarding expenses for cattle and calves than the allowance fixed by the Secretary, only one out of 41 had a higher actual cost for hogs; and 16 out of 28 had a lower actual cost for sheep.[47]

[47] There were more firms having costs on account of yarding *salaries* for cattle and calves and hogs than there were firms having costs on account of yarding *expenses* for the same species, because in some instances costs classified as "yarding expenses"—usually nominal—were not incurred at all.

There were more firms having costs on account of yarding *expenses* for sheep than there were firms having costs on account of yarding *salaries* for sheep, because a considerable number of firms specializing in handling other species would, upon receiving a consignment of sheep, have it handled by another firm (usually a sheep commission firm); thus the consignee firm would have no costs of yarding salaries or yarding expenses *directly* allocable to sheep. However, the accountants had to deal with some kind of ex-

Office expenses.—Twenty-five out of 56 agencies had a lower actual per head cost on account of office expenses for cattle and calves than the allowance fixed by the Secretary, 28 out of 56 agencies had a lower actual cost for hogs (one having the same figure), and 9 out of 59 had a lower actual cost for sheep (one having the same figure) (Par. 147, R. 102–104).[48]

Administrative and general expenses—Actual per head costs for administrative and general expenses, including telephone and telegraph, directors' fees, legal and auditing, taxes, mail, clearing house, general and miscellaneous, are set forth in paragraph 149 of the Secretary's order (R. 110–112). Thirty-eight out of 57 firms had lower actual costs than the allowance fixed by the Secretary for cattle and calves and one firm had the same figure;

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penses, such as yard supplies, which could not be directly charged to any species, and were allocated to all species on a basis of number of drafts handled; thus such a consignee firm as has been mentioned might have a functional cost on account of yarding expenses and none on account of yarding salaries.

[48] The fact that there were more firms having functional costs on account of office *salaries* than there were firms having functional costs on account of office *expenses* is due to the practice known as "clearing." Thus, a commission man might do his own selling, but hire all his office service, such as bookkeeping, stationery, etc. from another firm. The amount he paid the latter firm would really be compensation for a number of items other than bookkeeper's salary, but the man so "cleared" would carry that amount on his books as salary cost, and it was not practicable for the accountants to divide it into office salary and office expense.

40 out of 57 had a lower actual cost for hogs; and 14 out of 60 a lower actual cost for sheep and one had the same figure.

Insurance—As set forth in the Secretary's Order (Par. 150–154, R. 115–117), he obtained his allowance to cover premiums paid to carry insurable risks by considering actual quotations applicable to the market as a whole for mortgage and theft insurance (Par. 150, R. 115)—and by accepting the figures compiled by the appellants' own auditor in regard to workmen's compensation insurance (Par. 151, R. 116; Resp. Ex. 235). There was no substantial dispute between the parties as to the amount attributable to fire insurance premiums (Par. 151, R. 116; Resp. Ex. 235; Gov. Ex. 115, p. 27). There was likewise no dispute as to the amount chargeable for bond premiums, which was the actual amount expended by the agencies during the test period (Resp. Ex. 235, Gov. Ex. 115, p. 27). The Secretary did not include in his computations an allowance for public liability insurance, and the record supports this action (R. 532, 535, 536, 985).

Interest—The tables used in fixing the allowance for interest on invested capital are set forth in order, paragraphs 155 to 158 (R. 117–120). Thirty-three agencies out of 55 had a lower actual per head cost on this account for cattle and calves than the allowance made by the Secretary; 35 out of 54 had a lower cost as to hogs; and 34 out of 49 had a lower cost as to sheep.

3. *The Allowances Made by the Secretary for Those Costs Which the Conditions of Business Tend to Keep Down are More Than Sufficient to Cover the Appellants' Actual Expenditures for Those Costs*

The following table shows that if the allowances made by the Secretary to cover the seven functional costs classified by him as costs which the conditions of the business tend to keep down (including yarding and office salaries) are applied to the 1931 volume of business of appellants, they produce more than the actual out of pocket expenses of appellants for those seven functions for 1931, including additional accruals for interest on investment not shown by appellants' books as expenditures and insurance allowances to some firms which did not carry insurance:

Comparison of reasonable costs as found by the secretary with book figures of cost and accruals for seven expense functions of appellants

	Reasonable costs per head [1]	Total reasonable costs
Cattle and calves, total number of head, 2,284,207 [2]		
Yarding salaries	$0.0750	$171,315.53
Yarding expenses	.0140	31,978.90
Office salaries	.0525	119,920.87
Office expenses	.0300	68,526.21
Administrative and general	.0330	75,378.83
Insurance	.0070	15,989.45
Interest on investment	.0150	34,263.11
Total		517,372.90

[1] R. 122, par. 163, of Secretary's Order.

[2] See footnote on p. 163.

Comparison of reasonable costs as found by the secretary, etc.—Con.

	Reasonable costs per head	Total reasonable costs
Hogs, total number of head, 1,045,048 [1]		
Yarding salaries	$0.0300	$31,351.44
Yarding expenses	.0060	6,270.29
Office salaries	.0300	31,351.44
Office expenses	.0175	18,288.34
Administrative and general	.0200	20,900.96
Insurance	.0025	2,612.62
Interest on investment	.0070	7,315.34
Total		118,090.43
Sheep, total number of head, 1,896,608 [1]		
Yarding salaries	.0080	15,172.86
Yarding expenses	.0004	758.64
Office salaries	.0100	18,966.08
Office expenses	.0050	9,483.04
Administrative and general	.0050	9,483.04
Insurance	.0013	2,465.59
Interest on investment	.0040	7,586.43
Total		63,915.68
Grand total		699,379.01

[1] See following table.

Respondent's Exhibit #247:

Cattle and calves sold	1,782,928
Cattle and calves bought	501,279
Total	2,284,207
Hogs sold	956,531
Hogs bought	88,517
Total	1,045,048
Sheep sold	1,743,668
Sheep bought	152,940
Total	1,896,608

It may be objected that the computations shown in the foregoing table are defective because they include both livestock bought and livestock sold, and some expenses in buying such as yarding sala-

	Total reasonable costs	Book expenses and accruals	Reference
Yarding salaries	$217,839.83	$206,394.60	Gov. Ex. 114-1 to 107 Ex. 115B.
Yarding expenses	39,007.83	25,268.45	Gov. Ex. 115, page 23.
Office salaries	170,238.39	154,063.97	Gov. Ex. 114-1 to 107 Ex. 115B.
Office expenses	96,297.59	99,810.19	Gov. Ex. 115, page 25.
Administrative and general	105,762.83	103,292.36	Gov. Ex. 115, page 26.
Insurance	21,067.66	22,265.47	Gov. Ex. 115, page 27.
Interest on investment	49,164.88	43,061.11	(Resp. Ex. 239, less col. h.) (R 118, Fg. 157.)
Total	699,379.01	654,156.17	
Total book expenses and accruals	654,156.17		
Excess of total reasonable costs over book expenses, etc.	45,222.84		

ries and expenses are less than the same class of expenses in selling. There are offsetting factors, however, such as the fact that expenses for interest, per head, are very much greater for buying than for selling (Resp. Ex. 53, Schedule 14E, Sheet 1 of 4). Moreover, the appellants' own accountant has used the same method of computation (Respondents' Ex. 207). The table shows that there can be no serious dispute in the case as to the reasonableness of the Secretary's findings with respect to the costs which the conditions of the business tend to keep down.

D. THE ALLOWANCE MADE BY THE SECRETARY FOR RETURN TO THE OWNERS OF MARKET AGENCIES IS FULLY SUPPORTED BY THE EVIDENCE

The Secretary's allowance for return to the owners of market agencies is found in paragraphs 159–162 of his order (R. 120–121). This allowance, which includes compensation for management and

the carrying of uninsurable risks, is not attacked by appellants in their brief.

Management—In fixing an allowance to be made for management, as distinguished from the carrying of risks and other activities peculiar to an owner rather than a manager, the Secretary adopted the simple, practical, and reasonable method of considering salaries paid on the Kansas City market to men who were hired solely as managers, that is, who were not owners and who were not salesmen. His finding corresponded to the highest figure so ascertained. In the case of an owner who acted as manager, this would not be the limit of such owner's profit but would be merely compensation for the function of management. This allowance does not operate as a limit upon salaries payable to managers, but is merely a unit allowance. *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, 439.

Uninsurable risks—In making an allowance for the carrying of certain classes of risks, such as defective title to livestock, accounting errors, credit losses, etc. as to which insurance was conceivable although not actually obtainable, the Secretary adopted the agencies' own experience (Par. 161, R. 121). As to other classes of uninsurable risks, such as the possibility of loss through economic changes, the Secretary found that "whoever should bear these risks there is no practicable way of appraising them" (Par. 162, R. 121) and

accordingly made his rates higher than was necessary to cover costs and the profit he found reasonable.

VII

The Secretary Made a Legally Sufficient Finding that the Existing Rates Are Unreasonably High

In paragraph 179 of his order the Secretary states (R. 127):

> Upon the basis of the reasonable costs hereinbefore determined and upon a consideration of the entire record, it is found that respondents' schedules of rates and charges now under investigation contain rates and charges which are unreasonable and unjustly discriminatory.

This finding is sufficient on its face to satisfy the requirements of the Packers and Stockyards Act.[49]

Appellants object, however, that the Secretary's finding that the existing rates are unreasonably high is not adequately supported by evidentiary

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[49] Section 310 of the Packers and Stockyards Act provides that "Whenever after full hearing * * * the Secretary *is of the opinion* that any rate, * * * of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory" (italics supplied), he may determine and prescribe what will be the just and reasonable rate or charge to be thereafter observed in such case or the maximum or minimum rate to be charged. It should be noted that the Act does not require findings to be cast in any particular form.

findings.[50] There might be some merit in this objection if the Secretary's ultimate finding as to the unreasonableness of the existing rates stood alone and there was nothing in the order to indicate how or why the Secretary had reached this ultimate result. But that is not the case. The Secretary's order, which occupies 106 pages of the printed record, contains lengthy and detailed findings of fact which fully indicate how and why he reached this conclusion.[51]

The more important evidentiary findings which support the Secretary's ultimate finding that the existing rates are unreasonably high may be briefly summarized as follows:

(1) *The finding as to the amount of the charges in the existing tariff and a finding that, with cer-*

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[50] The District Court in its opinion states (R. 148):

> The Secretary made 162 findings of fact upon the evidence heard at the original hearing and at the rehearing. No contention is made but that these findings support the order. Unquestionably they do support the order and that fully.

[51] The decisions cited by appellants in their attack on the form of the Secretary's finding relate to factual situations which have nothing in common with the instant case. For example, this is not a situation where it is not clear what the order of the Secretary means (cf. *United States* v. *Chicago, M., St. P. & P. R. R. Co.*, 294 U. S. 499, 511); nor one in which the Secretary has failed to make a complete statement of the grounds of his determination (cf. *Beaumont, S. L. & W. Ry.* v. *United States*, 282 U. S. 74, 86); nor one in which the Secretary has failed to find some basic or essential fact required to support his order (cf. *Florida* v. *United States*, 282 U. S. 194, 215).

tain unimportant exceptions, these charges are uniform (R. 63–68).[52]

(2) *Findings as to the abnormal competitive conditions in the Kansas City market which tend to cause costs to be unreasonably high*—These include the Secretary's finding in paragraph 113 of his order that notwithstanding unfavorable business conditions and lower receipts in 1931 as compared with 1929, few of the market agencies showed substantial reductions of personnel in the latter year as compared with the former; that few firms made any substantial reduction in salaries and wages in the year 1931; and that in the face of general lower levels in business activity the market agencies were attempting to maintain their personnel and salaries at the levels obtained in the more prosperous year of 1929 (R. 82–83).

In paragraphs 129 and 130 of his order the Secretary found that there are more firms and a larger personnel on the Kansas City market than are necessary to dispose of shippers' livestock effectively; and that the unit costs of many of the firms

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[52] Appellants assert that the Secretary "did not find the existence of any monopolistic practice or of any practices affecting the free flow of interstate commerce." A finding in this form is not a condition precedent to the exercise of the power of the Secretary to prescribe reasonable rates. It is significant, however, that he found that appellants levied uniform charges on shippers (R. 64) and in view of this finding appellants' assertion that "the record shows that the market is free from all such [monopolistic] practices" (appellants' brief, p. 103) must be accepted with reservations.

are high because the volume of business coming into the market is divided among too many firms and handled by an unnecessarily large personnel (R. 90–91). In paragraph 131 of his order the Secretary found that conditions in the market tended to increase the costs of salesmanship and business getting and maintaining beyond reasonable levels (R. 91).

(3) *Findings as to the actual unit costs actually incurred*—As to all of the important functional unit costs, except salesmanship, the Secretary in his order set forth tables showing the actual unit costs incurred by each agency.[53]

With respect to salesmanship expense, the Secretary made specific findings as to the number of the

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[53] These findings are found on the following pages of the record: yarding salaries, pages 98–100; yarding expenses, pages 99–100; office salaries, pages 100–102; office expenses, pages 102–104; business getting and maintaining, pages 104–109; administrative and general expenses, pages 110–115; interest on capital, pages 117–120.

The Secretary did not set out in detail the actual costs of each appellant with respect to insurance, for the reason that the business practices of the various agencies as to carrying insurance were not comparable. Another reason for this was that the costs of the insurance items were definitely ascertainable through quotations of insurance companies. As to the other items, the Secretary did consider the costs of each appellant. This is demonstrated in paragraph 152 (R. 116), where the Secretary said:

> In considering the reasonable per head expense on account of some other functions the experience of each firm has been gone into and the normal arrived at on the basis of the experience of each individual firm.

salesmen who were employed in arm's length bargaining and the salary brackets into which they fall, and as to the volume of livestock which a competent salesman might be expected to sell under conditions which permitted him to operate in a reasonably efficient manner. These facts are the foundation for the Secretary's findings as to salesmanship costs. The Secretary did not make a finding as to the unit costs of salesmanship actually incurred by each market agency. In view of the abnormal competitive conditions existing in the Kansas City market which made it impossible for most salesmen, the competent as well as the inefficient, to operate in an efficient manner, a finding of this kind would have had little significance. Furthermore, the actual costs of salesmanship as set up on appellants' books included compensation for owner-salesmen which in most cases contained items of profit (even when the compensation was carried on the books as salary), and any computation of actual unit costs of salesmanship would necessarily have reflected these profit items and to that extent would have been misleading.

(4) *Findings as to the actual cost of management to those firms which employed managers and as to the cost of uninsurable risks* (R. 120–121)—These findings were used in making the allowances for reasonable unit profits.

(5) *Findings of reasonable unit costs and profits* (R. 122)—The finding of certain reasonable unit

costs necessarily carries with it the conclusion that any higher unit costs incurred by market agencies in the Kansas City market are unreasonable.

These findings furnish a complete and detailed explanation of the basis for the Secretary's conclusion that the existing rates were unreasonably high.[54] Nothing more is required. Certainly evidentiary findings need not be expressed in any special form of words nor need they conform to some indefinite standard of particularity as appellants seem to suggest.

Appellants complain that the Secretary did not find that "under the existing rates the compensation accruing to the owners of the agencies as a whole or to any of them was excessive" (appellants' brief, page 102). The Secretary's duty, however, was to determine whether or not rates were unreasonable and not whether profits were excessive. In view of his detailed findings as to actual costs and reasonable costs the absence of a finding as to excessive profits does not affect in any way the Secretary's ultimate conclusion as to the unreasonableness of the rates. Rates based on unreasonable costs may be unreasonable even though they do not

[54] In addition to the findings which have been described above and which relate particularly to the Secretary's conclusion that existing rates are too high, the Secretary's order contains detailed explanations and findings with respect to the business carried on by appellants in the Kansas City stockyards, the general conditions of the business, and the methods applied by the Secretary in determining unit functional costs and in prescribing rates.

produce excessive profits. The order clearly indicates that the Secretary found that in this case the existing rates were unreasonable not because they produced excessive profits but because they were based on costs which had been increased beyond all reasonable levels by the abnormal competitive conditions existing at the Kanas City market.

Appellants also complain that the Secretary did not find "that the rates charged exceeded the value of the service to the grower" (appellants' brief, page 102). Nothing in the Packers and Stockyards Act calls for a finding in precisely this form.

Indeed, it is highly doubtful if the concept of value of the service to shippers, as appellants appear to understand that concept, is capable of rational application in the kind of rate making involved in this case. There is no apparent test of that value which can be applied except the test of whether the rates are reasonable. Certainly, the value of the service cannot be determined, as appellants appear to believe, by establishing some mathematical relation between the rate charged and the value of the livestock sold. If the concept of value to the shipper has any meaning in this case, it can mean nothing more than that rates which are in fact unreasonable exceed the value of the service to the shippers. This is in accord with the intent of the Packers and Stockyards Act, which requires the Secretary to determine whether

rates are reasonable and provides that if they are unreasonable the shippers shall not be compelled to pay them, regardless of the mathematical relationship which may obtain between those rates and the value of the livestock sold. In this case the Secretary having determined, on the basis of complete and detailed evidentiary findings, that the existing rates are unreasonable, it was unnecessary for him also to find that the present rates exceed the value of the service to shippers. The findings cannot be defective because the Secretary having stated a proposition in one form then failed to restate the same proposition in another form. Tautology is not the test of the adequacy of the Secretary's findings. The question is whether they disclose the facts and the methods which he used in reaching his ultimate conclusion. The findings made by the Secretary in the instant case satisfy that test.

VIII

Appellants Had a Fair Hearing Which Fully Conformed With the Requirements of Due Process of Law and With the Statute

Appellants conclude their brief with an attack upon the regularity of the administrative proceedings upon which the Secretary's order was based, contending that the procedure was irregular, unfair, and violative of due process (appellants' brief, pp. 158–165). Their argument seems to rest upon three propositions: (1) that the Secre-

tary erroneously refused to adopt the practice of having the examiner make a tentative report to which appellants could file exceptions prior to argument before the Secretary; (2) that the District Court improperly struck from the petitions certain allegations to the effect that an Acting Secretary of Agriculture heard the oral arguments after each hearing on days when the Secretary of Agriculture was at his desk and neither sick, absent, nor disabled, and that under such circumstances the Acting Secretary was incompetent to function for the Secretary and hear oral arguments; and (3) that the District Court improperly struck from the petitions allegations made on information and belief to the effect that although the Secretary of Agriculture signed the order, he had not personally heard or read any of the evidence or considered oral arguments, and that his sole information about the case was derived from consultation with employees of the Department of Agriculture.[55]

Taking up first the argument based on appellants' request that the Secretary have the examiner prepare a tentative report to which appellants would be entitled to file exceptions, it is enough to say that such procedure is not required by the Packers and Stockyards Act nor have appellants pointed to any constitutional requirement that

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[55] The allegations covering these matters are contained in Section IV of the petitions (R. 4–6). On motion of the Government (R. 133–134) all of Section IV was stricken from the petitions by order of the District Court (R. 137–138).

such procedure be followed. It should also be noted that in the Omaha livestock commission rate proceeding which was involved in the case of *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420, no tentative report was prepared by the examiner upon which the market agencies involved therein could base exceptions. Due process of law requires a fair hearing, but appellees know of no case in which it has been held that due process of law requires the particular type of procedure, involving a tentative report by an examiner, which appellants requested in the original proceedings herein. It is submitted that the District Court properly struck from the petitions the allegations that the Secretary's order was void because the Secretary had denied appellants' request for the preparation by the examiner of a tentative report.

Taking up next the contention that the District Court improperly struck from the petitions the allegations challenging the regularity of the proceeding on the ground that oral arguments had been heard after each hearing by an Acting Secretary of Agriculture, it is pertinent to note that the Acting Secretary of Agriculture who heard the oral arguments after each hearing was the Assistant Secretary of Agriculture whose duties are conferred by the Act of February 9, 1889 (U. S. C. A. Tit. 5, Sec. 517) which provides as follows:

> There shall be in the Department of Agriculture an Assistant Secretary of Agriculture, to be appointed by the President, by

> and with the advice and consent of the Senate, who shall perform such duties as may be required by law or prescribed by the Secretary. The Assistant Secretary of Agriculture is authorized to perform such duties in the conduct of the business of the Department of Agriculture as may be assigned by the Secretary of Agriculture.

The above Section obviously confers on the Assistant Secretary of Agriculture the power to perform such duties as may be assigned by the Secretary of Agriculture and it is not limited to the performance by the Assistant Secretary of mere ministerial matters. While it is true that the Secretary's findings refer to the oral arguments as having been heard by the Acting Secretary of Agriculture (R. 28, 33), this Court may judicially notice the facts that on the date of each of the oral arguments R. W. Dunlap and Rexford G. Tugwell, respectively, were the Assistant Secretaries of Agriculture, fully authorized by statute to perform such duties as the Secretary might assign to them irrespective of whether the Secretary himself was absent or disabled.

Clearly there is no support for the contention that an administrative officer, authorized by law to make quasi judicial decisions, cannot rely upon the assistance and advice of subordinate officers and departmental employees. In *Inhabitants of the Town of West Springfield* v. *Mayo,* 265 Mass. 41, 163 N. E. 653, one of the questions involved was

whether a zoning law had been legally approved by the Attorney General. The facts were that the town clerk submitted to an Assistant Attorney General a certified copy of the zoning by-law and a map. The Assistant Attorney General examined the by-law and map for about an hour, and the map never was submitted to the Attorney General. Subsequently, the by-law was returned to the town clerk bearing the approval of the Attorney General over his own signature. The contention was made that the map was an essential part of the by-law and that as a matter of law the Attorney General could not approve the by-law without having seen the map. Holding that the approval of the Attorney General was legal, the Court said (163 N. E. 654):

> Of course it is true, as the defendants contend, that "official duties involving the exercise of discretion and judgment for the public weal cannot be delegated. They can be performed only in person." *Brown* v. *Newburyport,* 209 Mass. 259, 266, 95 N. E. 504, 508 (Ann. Cas. 1912B, 495), and cases cited. *Obviously this rule goes no further than to require the official to exercise his own judgment and discretion upon matters which are committed to him for determination.* It does not inhibit the official's use of assistance when the act to be done requires an examination or inspection of documents or physical objects: *Nor does it prohibit the official from arriving at a conclusion of fact*

> *which is based upon the report of an assistant.* It was not necessary that the Attorney General should approve the map separate and apart from the by-law. Nor was it necessary to the exercise of his judgment that the map should have been physically before him or that he personally should have examined it and traced the boundaries of the various zones. It was sufficient that the map was examined with the by-law for him, by one of his legal assistants; and that, receiving the report of his assistant, upon his own judgment he approved the by-law of which the map was an integral part. [Italics supplied.]

The above case is squarely in point and it enunciates a legal principle which must be the general law on this subject if administrative government is effectively to function. See also *Hisey* v. *Peters* (1896), Patent Decisions, page 22.

In the case of *In Re Jem Yuen*, 188 Fed. 350 (Dist. Ct. Mass. 1910), which arose on petition for habeas corpus, one of the questions involved was whether it was improper for the Secretary of Commerce and Labor in making an administrative decision to consider a "Memorandum for the Acting Secretary" which had been signed by the Commissioner General and which contained remarks on the evidence and a recommendation that the decision be affirmed. In reviewing the proceeding the court said (p. 354):

> I do not see how it can be contended that anything material to the decision, and not

> previously presented and discussed at the hearing, was brought into the case for the first time either by the memorandum or by the letter referred to. Nor do I think that the memorandum can be considered as indicating in any way that the officer whose duty it was to hear and determine the appeal did not hear and determine it himself. It cannot be said that the head or the acting head of a department, charged with such a duty, is forbidden to have a subordinate make a preliminary report on it for his guidance.

Appellants appear to accept the propriety of the procedure authorized by the Act for the taking of testimony before examiners appointed by the Secretary. If, as appellants contend, it was incumbent upon the Secretary to hear oral arguments personally, it would seem likewise incumbent upon him, and far more important, personally to hear the testimony of the witnesses.

The fact is, however, that the Act expressly provides in Section 402 that "The Secretary, *in person or by such agents as he may designate,* may prosecute any inquiry necessary to his duties under this Act in any part of the United States" (Italics supplied), and in Section 407 that "The Secretary—shall have the power to appoint, remove, and fix the compensation of such officers and employees * * * as shall be necessary to the administration of this Act * * *." It is plain that the Act contemplated that testimony should be taken by such examiners and agents as the Secretary des-

ignated, and indeed it is obvious that this is the only practicable procedure that could possibly be provided.

The Act, moreover, does not expressly provide for oral argument before the Secretary at all. The provisions with respect to hearing are found in Section 310 of the Act which provides that "Whenever after full hearing upon a complaint * * * or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative," the Secretary is of the opinion that existing rates are unreasonable, he may exercise his rate-making powers, etc.

Thus, the only requirement of the statute in this respect is that there be a *full hearing,* and in view of the two hearings in this case which lasted in the aggregate more than 3½ months and at which thousands of pages of testimony were taken and numerous exhibits put in evidence, it is patent indeed that the suggestion that appellants did not have a full hearing is frivolous.

Taking up finally the contention that the District Court erred in striking the allegations made on information and belief to the effect that the Secretary of Agriculture had not read the record, the briefs, or considered the oral arguments, the best answer to this contention is found in the language of the District Court when it said:

> We think it is unnecessary now to elaborate the obvious observation that the theory of these allegations is supported by nothing in

> the Act and that a construction of the Act consistent with that theory would destroy it altogether as a measure capable of practical administration. [R. 148.]

In *United States* v. *Great Northern Ry.*, 287 U. S. 144, the argument was made in seeking to void a certificate issued by the Interstate Commerce Commission that the certificate had been issued without the Commission having first made certain studies required to be made by the statute as a basis for action. Although this Court did not pass upon the question whether the finality of the Commission's certificate could be questioned on such grounds, the following observation of this Court suggests the possible involvements of this argument. This Court said (p. 155):

> A word of answer is still due to the argument of the government that the certificate is void because the work of the commission was so hasty and imperfect as to involve an abdication of its statutory duty. *Without probing at this time the legal implications of this argument,* we find it without adequate basis in the facts. [Italics supplied.]

It would indeed be a novel and dangerous doctrine if parties affected by administrative decisions, by alleging upon information and belief that the administrative tribunal had not given pending matters careful consideration or had signed orders upon insufficient deliberation, could go behind such orders and compel the members of such tribunals to

testify in court as to the adequacy of the consideration given by them to the issues involved. It might well lead to the paralysis of administrative tribunals if their members were constantly having to answer subpoenas to testify as to whether they had fully read the record in particular cases, whether they had consulted privately with experts who had worked on the case, whether they had accepted the recommendations of certain officials who had given minute and careful study to the issues involved, and numerous other questions pertaining to the mechanics of reaching a decision and preparing an order in an administrative matter. It is enough that public officials are presumed to be conscientious and to do their duty, and that they take full legal responsibility for their decisions.

The cases cited by appellants (*Southern Ry. Co.* v. *Virginia,* 290 U. S. 190; *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.,* 227 U. S. 88, 91; *Crowell* v. *Benson,* 285 U. S. 22, 56–57) are not in point. Those cases merely hold that due process of law requires a fair hearing—a general proposition of undisputed validity.

Appellants are wholly unjustified in asserting that the Government admitted "that the Secretary had never read, heard, or considered the record, or any part of it" (appellants' brief, p. 161). The Government moved to strike these allegations believing them to be impertinent and frivolous, and the motion to strike was granted. It is elementary

that a motion to strike only admits the truth of the allegations for pleading-purposes in order to secure a ruling upon their legal adequacy. There is no warrant for appellants' position that by moving to strike these allegations the Government admitted their truth in the same sense that would attach to an admission in an answer.

CONCLUSION

It is respectfully submitted that the decree of the District Court should be affirmed.

STANLEY REED,
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JOHN DICKINSON,
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WENDELL BERGE,
HENRY MCCLERNAN,
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JAMES C. WILSON,
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APRIL 1936.

APPENDIX A

Title III of the Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159 (7 U. S. C., Title 7, Secs. 181–229) provides in part as follows:

SEC. 301. When used in this Act—

(a) The term "stockyard owner" means any person engaged in the business of conducting or operating a stockyard;

(b) The term "stockyard services" means services or facilities furnished at a stockyard in connection with the receiving, buying, or selling on a commission basis or otherwise, marketing, feeding, watering, holding, delivery, shipment, weighing, or handling in commerce, of livestock;

(c) The term "market agency" means any person engaged in the business of (1) buying or selling in commerce livestock at a stockyard on a commission basis or (2) furnishing stockyard services; and

(d) The term "dealer" means any person, not a market agency, engaged in the business of buying or selling in commerce livestock at a stockyard, either on his own account or as the employee or agent of the vendor or purchaser.

* * * * *

SEC. 304. It shall be the duty of every stockyard owner and market agency to furnish upon reasonable request without discrimination, reasonable stockyard services at such stockyard * * *.

SEC. 305. All rates or charges made for any stockyard services furnished at a stock-

yard by a stockyard owner or market agency shall be just, reasonable, and nondiscriminatory, and any unjust, unreasonable, or discriminatory rate or charge is prohibited and declared to be unlawful.

* * * * *

SEC. 310. Whenever after full hearing upon a complaint made as provided in section 309 or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed.

* * * * *

SEC. 313. Except as otherwise provided in this Act, all orders of the Secretary under this title, other than orders for the payment of money, shall take effect within such reasonable time, not less than five days, as is prescribed in the order, and shall continue in force until his further order, or for a specified period of time, according as is prescribed in the order, unless such order is suspended or modified or set aside by the Secretary or is suspended or set aside by a court of competent jurisdiction.

SEC. 315. If any stockyard owner, market agency, or dealer fails to obey any order of the Secretary other than for the payment of money while the same is in effect, the Secretary, or any party injured thereby, or the United States by its Attorney General, may apply to the district court for the district in which such person has his principal place of business for the enforcement of such order. If, after hearing, the court determines that the order was lawfully made and duly served and that such person is in disobedience of the same, the court shall enforce obedience to such order by a writ of injunction or other proper process, mandatory or otherwise, to restrain such person, his officers, agents, or representatives from further disobedience of such order or to enjoin upon him or them obedience to the same.

SEC. 316. For the purposes of this title, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the pro-

visions of this title, and to any person subject to the provisions of this title.

TITLE IV

SEC. 402. For the efficient execution of the provisions of this Act, and in order to provide information for the use of Congress, the provisions (including penalties) of sections 6, 8, 9, and 10 of the Act entitled "An Act to create a Federal Trade Commission, to define its powers and duties, and for other purposes," approved September 26, 1914, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of this Act and to any person subject to the provisions of this Act, whether or not a corporation. The Secretary, in person or by such agents as he may designate, may prosecute any inquiry necessary to his duties under this Act in any part of the United States.

* * * * *

SEC. 407. The Secretary may make such rule, regulations, and orders as may be necessary to carry out the provisions of this Act and may cooperate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this Act in the District of Co-

lumbia and elsewhere, and as may be appropriated for by Congress, and there is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose.

APPENDIX B

Comparison of gross commissions (less seconds' commissions) with total non-salary expense for business getting and maintaining

Firm no.		Gross commissions less seconds	Business getting and maintenance	Percentage relation
1	Fred O. Morgan Com. Co	$3,600.00	$502.00	13.94
4	Ragland, Storts & Burrus Com. Co	21,386.00	4,773.00	22.32
5	Hinie Klecker Sheep Com. Co	17,539.00	4,060.00	23.15
6	Lewis-Flourney Live Stock Com. Co	11,644.00	1,345.00	11.55
7	Grover C. Maxwell Com. Co	19,238.00	1,949.00	10.13
9	John M. Nichols Live Stock Com. Co	5,557.00	246.00	6.92
11	L. B. Andrews Live Stock Com. Co	1,712.00		
12	Bowles Live Stock Com. Co	43,939.00	7,183.00	16.55
13	Crider Bros. Com. Co	45,877.00	6,094.00	13.28
14	Chas. Dixon Com. Co	31,308.00	4,183.00	13.36
15	Elliott Swain & Co	14,578.00	577.00	3.96
16	Farrar, Davis & Campbell Com. Co	18,661.00	1,608.00	8.62
17	Gladish Live Stock Com. Co	7,928.00	715.00	9.02
18	Haggart, Wilson Com. Co	36,193.00	4,042.00	11.17
19	W. E. Burrus, Interstate Com. Co	7,919.00	1,403.00	17.72
20	Kansas City Live Stock Com. Co	19,322.00	2,632.00	13.62
23	Fern O. Sanders Com. Co	19,541.00	2,154.00	11.02
25	C. A. Stuart & Co	35,706.00	4,557.00	12.76
26	Webster Bros. & Smith Com. Co	20,122.00	3,590.00	17.84
29	Stagner, Pierronett & Willis Com. Co	17,258.00	1,418.00	8.22
30	Tamblyn Com. Co	15,236.00	1,467.00	9.63
33	Henry Carnus Com. Co	1,523.00	138.00	9.06
34	Warren Cummings Com. Co	28,322.00	4,100.00	14.48
35	Drumm Standish Com. Co	43,046.00	9,167.00	21.30
37	Link Fasken Com. Co	993.00	54.00	5.44
42	Long & Perry Com. Co	38,573.00	8,185.00	21.22
43	Knight & Tice Sheep Com. Co	17,418.00	4,543.00	26.08
44	W. M. Leitch Sheep Com. Co	27,606.00	5,555.00	20.12
46	National Livestock Com. Co	87,649.00	11,388.00	12.99
48	Poole, Dempsey, Rutherford Com. Co	26,987.00	2,252.00	8.34
51	Harry Kennaley Com. Co	52,314.00	5,503.00	10.52
52	Jefferson, Lowry, Davis Com. Co	13,865.00	1,999.00	14.42
53	Ehrke-Martin Com. Co	23,669.00	4,805.00	20.30
54	John Clay & Co	152,777.00	26,237.00	17.17
55	Baucus & Co	40,032.00	4,517.00	11.28
56	Robinson, Hoover Com. Co	23,113.00	1,409.00	6.10
59	Swift & Henry Com. Co	121,412.00	18,038.00	14.86
60	H. Thies & Son	16,909.00	1,460.00	8.63
61	Ham Knighton Com. Co	7,058.00	580.00	8.22
62	Laird Bros. Com. Co	22,903.00	6,642.00	29.00
63	Martin, Blomquist & Lee Com. Co	102,215.00	23,668.00	23.16
65	Moffett Com. Co	24,404.00	1,640.00	6.72
66	Jay D. McCormack Live Stock Com. Co	1,983.00	45.00	2.27

Comparison gross commissions (less seconds' commissions) with total B. G. & M. expense (non-salary)—Continued

Firm no.		Gross commissions less seconds	Business getting and maintenance	Percentage relation
67	W. H. Peed Live Stock Com. Co	2,162.00	61.00	2.82
70	W. C. Kile Live Stock Com. Co	25,526.00	4,887.00	19.15
71	Ryan-Robinson Com. Co	39,523.00	5,389.00	13.64
72	Welch Live Stock Com. Co	1,674.00	69.00	4.12
73	Witherspoon Live Stock Com. Co	49,321.00	9,995.00	20.27
74	F. Buddington Com. Co	5,844.00	746.00	12.77
75	W. M. Curtis & Co	15,978.00	1,827.00	11.43
76	Greer & Co	7,934.00	78.00	.98
77	Inman, Hutton Com. Co	14,927.00	1,779.00	11.92
78	Walter C. Land Live Stock Com. Co	7,455.00	850.00	11.40
79	Less White Live Stock Com	7,197.00	720.00	10.00
82	Wilson Egan & Co	64,962.00	10,299.00	15.85
83	Burlington Com. Co	68,266.00	8,429.00	12.35
84	Cassidy Southwestern Com. Co	51,872.00	6,416.00	12.37
87	Dave Hamer	8,884.00	977.00	11.00
88	Ira Kimmons Com. Co	1,832.00	852.00	46.51
10	Producers Com. Assn	101,283.00	24,810.00	24.50
36	Farmers Union Live Stock Com. Co	99,132.00	9,149.00	9.23
	Total	1,862,827.00	283,756.00	15.22

These figures are taken from Gov. Ex. 115, p. 31.

NOTE.—Seconds are consignments purchased by traders and again placed with market agencies for sale—therefore not subject to duplicate distribution for B. G. & M. expense.

APPENDIX C

IV. Sample analysis of variation between per-head costs as found by the Government accountant and as finally determined by the secretary. (Yarding salaries charged to cattle and calves)

Firm	Yard salary			Adjustments made by Secretary				Order (R. 98) per head 7+2
	(1) Amount	(2) Head	(3) Per head	(4) Eliminate owners' salary	(5) Eliminate nonowner salesmen	(6) Add nonowner yard a/c sell	(7) Final yard sal. =1−(4+5)+6	
4	$3,405.60	35,763	$0.0952		$712.50	$506.00	$3,199.10	$0.0895
6	1,366.74	15,841	.0863	$180.00	90.00	218.75	1,315.49	.0830
7	2,273.62	15,790	.1440	562.50	371.32	796.50	2,136.30	.1353
9	120.74	3,113	.0388				120.74	.0388
11	400.00	1,878	.2130				400.00	.2130
12	5,260.05	67,947	.0774		1,505.70	1,080.00	4,834.35	.0711
13	8,158.40	63,945	.1276	402.90	601.50	1,065.60	8,219.60	.1285
14	6,136.39	42,094	.1458	1,149.97	2,015.01		2,971.41	.0706
15	1,797.26	14,983	.1200	275.46	1,056.00		465.80	.0311
16	2,450.25	26,673	.0919	960.00		375.00	1,865.25	.0699
17	1,419.35	11,336	.1252	418.50		584.50	1,585.35	.1399
18	6,173.67	59,107	.1044	2,000.00	330.00		3,843.67	.0650
19	1,908.66	12,570	.1518	350.12	344.99	184.04	1,397.59	.1112
66	164.93	3,656	.0451	141.38			23.55	.0064
67	127.75	454	.2814	121.40			6.35	.0140
				(A)	(B)	(C)		

Note A (column A).—In the original study a questionnaire was used to distribute salaries—Part of owner's salesmen's and buyer's time was allocated to yarding function. These amounts were restored to selling and buying for consideration in the Secretary's order. Only those employees devoting the major part of their time to yard functions were left in yard salary expense.

Note B (column B).—In the original distribution based on the questionnaire—a part of nonowner salesmen's and buyers' time was allocated to yarding function. These amounts were restored to selling and buying for consideration in the Secretary's order. Only those nonowner employees devoting the major part of their time to yard functions were left in yard salary expense.

Note C (column C).—In the original distribution based on the questionnaire—a part of nonowner yardmen salaries was allocated to selling or buying. These amounts were restored to yarding in the Secretary's order. The major part of the time of these yardmen having been devoted to yard functions—the amount allocated to selling or buying in the cost study, was restored to yard salary expense.

All figures taken from Government exhibit 115, p. 7, and 115 B, except final unit costs (R. 98).

EXPLANATION OF APPENDIX C

For example, the accountant, in determining the actual per head functional cost for Firm No. 6

included in his total functional cost $180.00 on account of a portion of owner's salary charged by the accountant to the yarding function, and $90.00 on account of a portion of non-owner salesmen's time; the Secretary, in following his policy of charging all of a man's time to the function to which a major part of his time was devoted, deducted said allowance of $180.00 and $90.00 from the total functional cost found by the accountant. Similarly, the accountant charged $218.75 of a yardman's salary to some other function (to which a portion of the man's time had been devoted) and the Secretary, for the same reason returned said amount to yarding salaries, adding it to the total functional cost found by the accountant. These operations resulted in a total functional cost as determined by the Secretary in the sum of $1,315.49; this amount, divided by the total number of head, resulted in the functional unit cost appearing in paragraph numbered 144 of the Secretary's order (R. 98). Functional unit costs for other firms were determined by the Secretary in the same manner.

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No. 686

In the Supreme Court of the United States

OCTOBER TERM, 1935

FRED O. MORGAN, DOING BUSINESS AS FRED O. MORGAN SHEEP COMMISSION COMPANY, ET AL., APPELLANTS

v.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE

MOTION OF THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE FOR IMMEDIATE ISSUANCE OF MANDATE

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MOTION OF THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE FOR IMMEDIATE ISSUANCE OF MANDATE

Now come the United States of America and the Secretary of Agriculture by the Solicitor General and respectfully move the Court to cause the immediate issuance of the mandate to be directed to the court below pursuant to the decree of this Court entered May 25, 1936, and in support of said motion assign the following:

By joint and final decree entered on June 20, 1935, a statutory three-judge court for the Western District of Missouri dismissed petitions in fifty suits which the fifty appellants herein each

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separately instituted to enjoin the enforcement of an order of the Secretary of Agriculture dated June 14, 1933, fixing maximum rates chargeable by market agencies for selling and buying livestock at the Kansas City Stock Yards in Kansas City, Missouri, and Kansas City, Kansas (R. 166). Prior to the joinder of issue the District Court struck from the several petitions portions alleging that appellants were not granted a proper hearing by the Secretary of Agriculture (R. 137).

The District Court entered a temporary restraining order against the enforcement of the rates prescribed by the Secretary conditioned upon appellants depositing with the court the amounts collected in excess of the prescribed rates (R. 131–136). By the order granting the application for *supersedeas* entered by the District Court on June 29, 1935, the temporary restraining order and the impounding order were continued in effect pending such final disposition of the case as might be required by the decision of this Court (R. 178–180).

On May 25, 1936, this Court rendered its opinion, holding that the court below erred in striking out the allegations of paragraph IV of the bill of complaint with respect to the sufficiency of the hearing accorded appellants by the Secretary of Agriculture, that the defendants should be required to answer these allegations, and that the question of whether appellants had a proper hearing should be determined. The decree of the

District Court was reversed and the cause remanded for further proceedings in conformity with the opinion of this Court.

Under Rule 34 of this Court the mandate will not issue until the expiration of twenty-five days from the date of its decree entered herein on May 25, 1936, unless the time is shortened by order of the Court.

Further proceedings below must be conducted before a three-judge District Court in accordance with the provisions of Section 316 of the Packers and Stockyards Act, 1921, c. 64, 42 Stat. 159, 168; The Act of June 18, 1910, c. 309, 36 Stat. 539; and the Urgent Deficiencies Act of October 22, 1913, c. 32, 38 Stat. 208, 219.

It is believed that it will be difficult to convene a three-judge District Court in the Western District of Missouri in the month of July or August. If the mandate of this Court issues as of course, it will be impossible to have further proceedings in the court below before July. Consequently, unless the mandate is issued immediately, it is probable that such further proceedings cannot be had until autumn.

This rate proceeding was instituted by the Secretary of Agriculture on April 7, 1930. In view of the length of time the proceeding has been pending, appellees submit that it is in the public interest that all reasonable steps be taken to avoid unnecessary delay. Immediate issuance of the mandate

will avoid substantial delay and materially shorten the length of time required for the final disposition of the case.

WHEREFORE, the United States of America and the Secretary of Agriculture respectfully move the Court for immediate issuance of the mandate.

STANLEY REED,
Solicitor General.

U. S. GOVERNMENT PRINTING OFFICE: 1939

SUPREME COURT OF THE UNITED STATES.

No. 686.—October Term, 1935.

Fred O. Morgan, doing business as Fred O. Morgan Sheep Commission Company, et al., Appellants, *vs.* The United States of America and the Secretary of Agriculture.	Appeal from the District Court of the United States for the Western District of Missouri.

[May 25, 1936.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

These are fifty suits, consolidated for the purpose of trial, to restrain the enforcement of an order of the Secretary of Agriculture, fixing the maximum rates to be charged by market agencies for buying and selling livestock at the Kansas City Stock Yards. Packers and Stockyards Act, 1921, 42 Stat. 159, 7 U. S. C. 181-229.

The proceeding was instituted by an order of the Secretary of Agriculture in April, 1930, directing an inquiry into the reasonableness of existing rates. Testimony was taken and an order prescribing rates followed in May, 1932. An application for rehearing, in view of changed economic conditions, was granted in July, 1932. After the taking of voluminous testimony, which was concluded in November, 1932, the order in question was made on June 14, 1933. Rehearing was refused on July 6, 1933.

Plaintiffs then brought these suits attacking the order, so far as it prescribed maximum charges for selling livestock, as illegal and arbitrary and as depriving plaintiffs of their property without due process of law in violation of the Fifth Amendment of the Constitution. The District Court of three judges entered decrees sustaining the order and dismissing the bills of complaint. 8 F. Supp. 766. Motions for rehearing were denied and, by stipulation, the separate decrees were set aside and a joint and final decree was entered to the same effect. Plaintiffs bring this direct appeal. 7 U. S. C. 217; 28 U. S. C. 47.

On the merits, plaintiffs assert that the ultimate basis for the reduction in commission rates is the Secretary's opinion that there are too many market agencies, too many salesmen, and too much competition in the business; that the Secretary has departed entirely from the evidence as to the actual cost of employing salesmen in selling cattle at these yards and has made an allowance for salaries which is based on pure speculation and is wholly inadequate to meet the cost of the service; that he has substituted in place of his accountants' figures as to actual expenditures, with respect to the item entitled "Business Getting and Maintaining Expense", a hypothetical allowance greatly less than actual cost; and that the Secretary has thus made findings without evidence and an order, essentially arbitrary, which prescribes unreasonable rates. The Government answers that, while the Secretary is not authorized expressly to prescribe or limit the number of firms that may engage in the market agency business, he is under a duty to take cognizance of evidence tending to show that, under present competitive conditions, certain costs actually incurred are unreasonable; that in determining what are just and reasonable rates, he must give consideration to evidence of the excessiveness of costs and if such evidence shows that there are many market agencies not receiving a sufficient volume of business to entitle their costs to be regarded as reasonable, the Secretary must take cognizance of that fact; that it was in this view that the Secretary made certain findings as to the inadequacy of the present business at the stockyards to support economically all the firms now striving to make a profit; that his findings, supported by evidence, were directly pertinent to the determination of reasonable costs, and so determining the Secretary was authorized to fix the rates prescribed in his order.

Before reaching these questions we meet at the threshold of the controversy plaintiffs' additional contention that they have not been accorded the hearing which the statute requires. They rightly assert that the granting of that hearing is a prerequisite to the making of a valid order. The statute provides (42 Stat. 159, 166, sec. 310; 7 U. S. C. 211):

"Sec. 310. Whenever after full hearing upon a complaint made as provided in section 309, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market

agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rates or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and non-discriminatory to be thereafter followed;

. . . ."

The allegations as to the failure to give a proper hearing are set forth in Paragraph IV of the bill of complaint, quoted in full in the margin.[1] The allegations in substance are: That separate hearings were not accorded to the respective respondents (plaintiffs here). That at the conclusion of the taking of the testimony before an examiner, a request was made that the examiner prepare a tentative report, which should be subject to oral argument and exceptions, so that a hearing might be had before the Secretary without undue inconvenience to him, but that the request was denied and no tentative report was exhibited to plaintiffs and no oral argument upon the issues presented by the order of inquiry and the evidence was at any time had before the Secretary. That the Secretary, without warrant of law, delegated to Acting Secretaries the determination of issues with respect to the reasonableness

[1] Paragraph IV of the bill of complaint is as follows:

"Petitioner states that the Order is null and void in that this petitioner was denied a full hearing before the Secretary upon the matters and things referred to in the Order of Inquiry as provided for in said Packers and Stockyards Act, 1921, and the enforcement of the Order would take Petitioner's property without due process of law, in violation of the Fifth Amendment of the Constitution of the United States, in that:

"(a) The Secretary overruled and denied the request of this petitioner for a separate, individual and independent hearing apart from any other of the respondents named in said Notice of Inquiry to the prejudice of this petitioner.

"(b) This petitioner requested at the conclusion of the hearings held under said Notice of Inquiry before the said John C. Brooke, that said Examiner prepare a tentative report upon the evidence to be presented to the petitioner and the Secretary subject to oral argument as to any exceptions thereto which the petitioner might care to present, so that in this manner a hearing might be had before the Secretary without undue inconvenience to the Secretary, but said request was denied and no tentative report was exhibited to petitioner and no oral argument upon the issues presented by said Order of Inquiry and the evidence taken by said Examiner was at any time had before the Secretary.

"(c) The Secretary, without warrant or authority of law, delegated to the said R. W. Dunlap and Rexford G. Tugwell, purporting to be at the times hereinbefore named Acting Secretaries of Agriculture, authorities and powers vested solely in the Secretary involving the exercise of discretion and the determination of issues in respect to the justice, reasonableness and lawfulness of the rates and charges of this petitioner. At each and all of the times hereinabove referred to, when the said oral arguments were presented after the

of the rates involved. That when the oral arguments were presented after the original hearing, and after the rehearing, the Secretary was neither sick, absent, nor otherwise disabled, but was at his office in the Department of Agriculture and the appointment of any other person as Acting Secretary was illegal. That the Secretary at the time he signed the order in question had not personally heard or read any of the evidence presented at any hearing in connection with the proceeding and had not heard or considered oral arguments relating thereto or briefs submitted on behalf of the plaintiffs, but that the sole information of the Secretary with respect to the proceeding was derived from consultation with employees in the Department of Agriculture out of the presence of the plaintiffs or any of their representatives.

On motion of the Government, the District Court struck out all the allegations in Paragraph IV of the bill of complaint and the plaintiffs were thus denied opportunity to require an answer to these allegations or to prove the facts alleged.

Certain facts appear of record. The testimony was taken before an examiner. At its conclusion, counsel for respondents stated "that he would continue to demand that the Secretary hear personally the argument of the evidence in behalf of the individual respondents, or at least have some definite course of procedure adopted whereby the examiner, or some one else, should formulate

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original hearing in said proceeding and after the re-hearing thereof, the then Secretary of Agriculture was in Washington, D. C., at his office in the Department of Agriculture, and at said time was neither sick, absent, nor from any other cause disabled in the performance of official duties of said Secretary of Agriculture, and a purported appointment of any other person as Acting Secretary of Agriculture was illegal, null and void under the laws of the United States.

"(d) Petitioner states on information and belief, and, therefore, alleges the fact to be, that the Secretary at the time said Order was signed by him had not personally heard or read any of the evidence presented at any hearing in connection with this proceeding and had not heard or considered oral arguments relating thereto submitted on behalf of this petitioner and had (*sic*) read or considered any briefs submitted by petitioner in this proceeding, but that the sole information of said Secretary with respect to said proceeding was derived from consultation with employees in the Department of Agriculture, out of the presence of this petitioner or any representative of this petitioner.

"By reason of each and all of the foregoing facts, petitioner avers that said course of action so taken by the Secretary was without warrant and authority of law, and by reason of each and all of the acts and omissions in this paragraph referred to (including the denial of petitioner's request for a separate hearing and the overruling of objections) this petitioner has been denied the 'full hearing' before the Secretary to which the petitioner is entitled under said Packers and Stockyards Act, 1921, and under the Constitution of the United States".

a report on the evidence so that the respondents could have the character of hearing and right to present their side of the issues in this case, which they believe the law entitles them to". The Government does not suggest that this request was granted and plaintiffs say that it was denied. Oral argument upon the evidence was had before the Acting Secretary of Agriculture. Subsequently, brief was filed on plaintiffs' behalf. Thereafter, reciting "careful consideration of the entire record in this proceeding", findings of fact and conclusions, and an order prescribing rates, were signed by the Secretary of Agriculture.

First.—The Packers and Stockyards Act makes the provisions of all laws relating to the "suspending or restraining the enforcement" or the "setting aside" of the orders of the Interstate Commerce Commission applicable to the "jurisdiction, powers and duties of the Secretary" in enforcing the provisions of the Act. Sec. 316; 7 U. S. C. 217. These suits for the review of the administrative action were thus directly authorized and appeal lies under the Urgent Deficiencies Act of October 22, 1913. 38 Stat. 219, 220; 28 U. S. C. 47. *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420, 443; *Acker* v. *United States*, No. 655, decided May 18, 1936. All questions touching the regularity and validity of the proceeding before the Secretary are open to review. *United States* v. *Abilene & Southern Railway Co.*, 265 U. S. 274, 286-290; *Florida* v. *United States*, 282 U. S. 194, 212-215. When the Secretary acts within the authority conferred by the statute, his findings of fact are conclusive. *Tagg Bros. & Moorhead* v. *United States*, *supra*; *St. Joseph Stock Yards Co.* v. *United States*, No. 497, decided April 27, 1936; *Acker* v. *United States*, *supra*. But, in determining whether in conducting an administrative proceeding of this sort the Secretary has complied with the statutory prerequisites, the recitals of his procedure cannot be regarded as conclusive. Otherwise the statutory conditions could be set at naught by mere assertion. If upon the facts alleged, the "full hearing" required by the statute was not given, plaintiffs were entitled to prove the facts and have the Secretary's order set aside. Nor is it necessary to go beyond the terms of the statute in order to consider the constitutional requirement of due process as to notice and hearing. For the statute itself demands a full hearing and the order is void if such a hearing was denied. *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co.*, 227 U. S. 88, 91; *United States*

v. *Abilene & Southern Railway Co., supra; Florida* v. *United States, supra; United States* v. *B. & O. R. R. Co.*, 293 U. S. 454, 464.

Second.—The outstanding allegation, which the District Court struck out, is that the Secretary made the rate order without having heard or read any of the evidence, and without having heard the oral arguments or having read or considered the briefs which the plaintiffs submitted. That the only information which the Secretary had as to the proceeding was what he derived from consultation with employees of the Department.

The other allegations of the stricken paragraph do not go to the root of the matter. Thus, it cannot be said that the failure to hear the respondents separately was an abuse of discretion. Again, while it would have been good practice to have the examiner prepare a report and submit it to the Secretary and the parties, and to permit exceptions and arguments addressed to the points thus presented,—a practice found to be of great value in proceedings before the Interstate Commerce Commission—we cannot say that that particular type of procedure was essential to the validity of the hearing. The statute does not require it and what the statute does require relates to substance and not form.

Nor should the fundamental question be confused with one of mere delegation of authority. The Government urges that the Acting Secretary who heard the oral argument was in fact the Assistant Secretary of Agriculture whose duties are prescribed by the Act of February 9, 1889 (5 U. S. C. 517), providing for his appointment and authorizing him to perform such duties in the conduct of the business of the Department of Agriculture as may be assigned to him by the Secretary. If the Secretary had assigned to the Assistant Secretary the duty of holding the hearing, and the Assistant Secretary accordingly had received the evidence taken by the examiner, had heard argument thereon and had then found the essential facts and made the order upon his findings, we should have had simply the question of delegation. But while the Assistant Secretary heard argument he did not make the decision. The Secretary who, according to the allegation, had neither heard nor read evidence or argument, undertook to make the findings and fix the rates. The Assistant Secretary, who had heard, assumed no responsibility for the findings or order, and the Secretary, who had not heard, did assume that responsibility.

We may likewise put aside the contention as to the circumstances in which an Acting Secretary may take the place of his chief. In the course of administrative routine, the disposition of official matters by an Acting Secretary is frequently necessary and the integrity of administration demands that credit be given to his action in that capacity. We have no such question here. The Acting Secretary did not assume to make the order.

Third.—What is the essential quality of the proceeding under review, and what is the nature of the hearing which the statute prescribes?

The proceeding is not one of ordinary administration, conformable to the standards governing duties of a purely executive character. It is a proceeding looking to legislative action in the fixing of rates of market agencies. And, while the order is legislative and gives to the proceeding its distinctive character (*Louisville & Nashville R. R. Co.* v. *Garrett*, 231 U. S. 298, 307), it is a proceeding which by virtue of the authority conferred has special attributes. The Secretary, as the agent of Congress in making the rates, must make them in accordance with the standards and under the limitations which Congress has prescribed. Congress has required the Secretary to determine, as a condition of his action, that the existing rates are or will be "unjust, unreasonable, or discriminatory". If and when he so finds, he may "determine and prescribe" what shall be the just and reasonable rate, or the maximum or minimum rate, thereafter to be charged. That duty is widely different from ordinary executive action. It is a duty which carries with it fundamental procedural requirements. There must be a full hearing. There must be evidence adequate to support pertinent and necessary findings of fact. Nothing can be treated as evidence which is not introduced as such. *United States* v. *Abilene & Southern Railway Co., supra.* Facts and circumstances which ought to be considered must not be excluded. Facts and circumstances must not be considered which should not legally influence the conclusion. Findings based on the evidence must embrace the basic facts which are needed to sustain the order. *Interstate Commerce Commission* v. *Louisville & Nashville R. R. Co., supra; Chicago Junction Case*, 264 U. S. 258, 263; *United States* v. *Abilene & Southern Railway Co., supra; Florida* v. *United States, supra; United States* v. *B. & O. R. R. Co., supra.*

A proceeding of this sort requiring the taking and weighing of evidence, determinations of fact based upon the consideration of the evidence, and the making of an order supported by such findings, has a quality resembling that of a judicial proceeding. Hence it is frequently described as a proceeding of a *quasi-judicial* character. The requirement of a "full hearing" has obvious reference to the tradition of judicial proceedings in which evidence is received and weighed by the trier of the facts. The "hearing" is designed to afford the safeguard that the one who decides shall be bound in good conscience to consider the evidence, to be guided by that alone, and to reach his conclusion uninfluenced by extraneous considerations which in other fields might have play in determining purely executive action. The "hearing" is the hearing of evidence and argument. If the one who determines the facts which underlie the order has not considered evidence or argument, it is manifest that the hearing has not been given.

There is thus no basis for the contention that the authority conferred by section 310 of the Packers and Stockyards Act is given to the Department of Agriculture, as a department in the administrative sense, so that one official may examine evidence, and another official who has not considered the evidence may make the findings and order. In such a view, it would be possible, for example, for one official to hear the evidence and argument and arrive at certain conclusions of fact, and another official who had not heard or considered either evidence or argument to overrule those conclusions and for reasons of policy to announce entirely different ones. It is no answer to say that the question for the court is whether the evidence supports the findings and the findings support the order. For the weight ascribed by the law to the findings—their conclusiveness when made within the sphere of the authority conferred—rests upon the assumption that the officer who makes the findings has addressed himself to the evidence and upon that evidence has conscientiously reached the conclusions which he deems it to justify. That duty cannot be performed by one who has not considered evidence or argument. It is not an impersonal obligation. It is a duty akin to that of a judge. The one who decides must hear.

This necessary rule does not preclude practicable administrative procedure in obtaining the aid of assistants in the department. Assistants may prosecute inquiries. Evidence may be taken by

an examiner. Evidence thus taken may be sifted and analyzed by competent subordinates. Argument may be oral or written. The requirements are not technical. But there must be a hearing in a substantial sense. And to give the substance of a hearing, which is for the purpose of making determinations upon evidence, the officer who makes the determinations must consider and appraise the evidence which justifies them. That duty undoubtedly may be an onerous one, but the performance of it in a substantial manner is inseparable from the exercise of the important authority conferred.

The Government presses upon our attention the case of *Local Government Board* v. *Arlidge* [1915] A. C. 120, reversing *King* v. *Local Government Board* [1914] 1 K. B. 160. That case has provoked much discussion, but we do not think it necessary to review it, as it relates to a different sort of administrative action and is not deemed to be pertinent to a proceeding under the statute before us and to the hearing which is required by the principles established by our decisions.

Our conclusion is that the District Court erred in striking out the allegations of Paragraph IV of the bill of complaint with respect to the Secretary's action. The defendants should be required to answer these allegations and the question whether plaintiffs had a proper hearing should be determined.

The decree is reversed and the cause is remanded for further proceedings in conformity with this opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.